2024 INSC 239

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1738-39 OF 2024

(ARISING OUT OF SLP(CRL.) NOS. 3390-91 OF 2024)

NENAVATH BUJJI ETC. …APPELLANT(S)

VERSUS

THE STATE OF TELANGANA AND ORS. …RESPONDENT(S)

J U D G M E N T

J. B. PARDIWALA, J.: -

For the convenience of the exposition, this judgement is divided in the following parts: -

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1. Leave granted in both the captioned appeals.

2. Since, the issues raised in both the captioned appeals are the same; both the appellants are co-detenus and the challenge is also to the self-same judgment and order passed by the High Court those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. For the sake of convenience, the Criminal Appeal No. ……. of 2024 @ SLP (Cri) No. 3390 of 2024 is treated as the lead matter.

4. This appeal is at the instance of a detenu, preventively detained under Section 3(2) of the Telangana Prevention of Dangerous Activities of Boot-Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders,

Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (for short, the "**Act 1986**") and is directed against the judgment and order passed by a Division Bench of the High Court for the State of Telangana at Hyderabad (Special Original Jurisdiction) dated 16.09.2023 in Writ Petition No. 26941 of 2023 filed by the appellant herein by which the Division Bench rejected the writ petition and thereby declined to interfere with the order of preventive detention passed by the Commissioner of Police Rachakonda Commissionerate, State of Telangana dated 12.09.2023 in exercise of his powers under Section 3(2) of the Act 1986.

A. FACTUAL MATRIX

5. The order of detention dated 12.09.2023 passed by the respondent No. 2 herein reads thus:

> ***"ORDER OF DETENTION***
>
> *ORDER OF DETENTION UNDER SUB SECTION (2) OF SECTION 3 OF THE "TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG-OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS, LAND-GRABBERS, SPURIOUS SEED OFFENDERS, INSECTICIDE OFFENDERS, FERTILISER OFFENDERS, FOOD ADULTERATION OFFENDERS, FAKE DOCUMENT OFFENDERS, SCHEDULED COMMODITIES OFFENDERS, FOREST OFFENDERS, GAMING OFFENDERS, SEXUAL OFFENDERS, EXPLOSIVE SUBSTANCES OFFENDERS, ARMS OFFENDERS, CYBER CRIME*

OFFENDERS AND WHITE COLLAR OR FINANCIAL OFFENDERS ACT, 1 OF 1986 (AMENDMENT ACT NO. 13 OF 2018)".

WHEREAS, information has been placed before me that the offender "Nenavath Ravi S/o. Nenavath Jagan, Age: 23 years, Occ: Coolie, R/o. Indiranagar Colony, Chandrayanagutta, Hyderabad, N/o. Padamati Thanda village, Neredugumma Mandal, Nalongda Dist" is a "Goonda" as defined in clause (g) of Section 2 of the "Telangana prevention of dangerous activities of bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders, land-grabbers, spurious seed offenders, insecticide offenders, fertilizer offenders, food adulteration offenders, fake document offenders, scheduled commodities offenders, forest offenders, gaming offenders, sexual offenders, explosive substances offenders, arms offenders, cyber crime offenders and white collar or financial offenders Act, 1 of 1986 (Amendment Act No. 13 of 2018)" and that he has been habitually engaging himself in unlawful acts and indulging in committing of Robberies, Property theft offences and Gold Chain Snatchings including sacred Mangalsutras from women folk by using criminal force on Public roads in broad day light continuously, repeatedly in one Police Station limits of Madgul PS, Rachakonda Commissionerate & Other PSs of Nalgonda District, thereby creating large scale fear and panic among the General public especially women and thus his activities are prejudicial to the maintenance of Public Order and affected society adversely.

In the recent past, during the year 2023, in quick succession, the proposed detenu along with his associates was involved in (04) offences under penal sections covered by Chapter-XVII of Indian Penal Code, 1860, vide Cr.Nos 1) 129/2023 U/s 379 IPC of PS Chinthapally, 2) 39/2023 U/s 394 IPC of Madgul P.S. 3) 106/2023 U/s 356, 379 IPC of Chinthapally P.S. and 4) 107/2023 U/s 392 IPC of Madgul P.S. of Rachakonda Commissionerate.

Among the above offences, (02) offences vide Cr. Nos. 1) 129/2023 and 2) 106/2023 were reported to be out of this Commissionerate limits and as above (02) offences committed by the proposed

detenu are referred to as criminal history of the proposed detenu and not relied upon..

The remaining (02) offences pertaining to this Commissionerate vide Cr Nos: 1) 39/2023, 2) 107/2023 of Madgul P.S. are considered as grounds for his detention.

The offender/proposed detenu committed all the above Property theft offences/gold chain snatching offences continuously, repeatedly in quick succession and fall within proximity period and committed in one police station limits i.e. Madgul PS.

The offender/proposed detenu along with his associates has been committing offences continuously, and repeatedly in order to earn easy money to lead lavish life, which are punishable under chapter XVII of Indian Panel Code. He is also committing illegal acts (thefts) involving breach of peace and public tranquility. The continuous presence of the offender in the area is detrimental to the maintenance of Public Order, apart from disturbing the peace, tranquility and social harmony in the society.

WHEREAS, I, D.S. Chauhan, IPS, Commissioner of Police, Rachakonda, am satisfied from the material placed before me that the offender Nenavath Ravi, is a Goonda as defined in clause (g) of Section 2 of the "Telengana prevention, detention Act, 1 of 1986 (Amendment Act No. 13 of 2018)"

As per the clause (g) of section 2 of the "Telangana prevention, detention Act, 1 of 1986 (Amendment Act No. 13 of 2018)" a "Goonda" means "a person, who either by himself or a member of or leader of gang, habitually commits or attempts to commit or abets the commission of offences, which are punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code".

All the offences committed by the offender punishable under penal sections of Chapter XVII of the Indian Penal Code, 1860". As such, criminal activities of the offender fall within the ambit of sec. 2(g) of the Act 1 of 1986 to term him as a "Goonda" from Madgul PS of Rachakonda Commissionerate.

WHEREAS, I D.S. Chauhan, I.P.S., Commissioner of Police, Rachakonda, am aware that the Police Madgul arrested the offender/proposed detenu Nenavath Ravi on 12-18-2023 at 1230 hours in Cr.No. 107/2023 of PS Madgul and produced before the Hon'ble JFCM at Amangal for judicial remand and lodged in Central Prison Cherlapally. In remaining ground case, he was produced before the Court by executing PT warrant on 24.08.02023 and lodged in the jail.

In pursuance of his confession, Police seized stolen booty i.e. 1) Honda Shine Motor Cycle Br No: TS 05 EZ 6413 pertaining to Cr No. 129/2023 of PS Chintapally from the house of his relative in Manneguda village at his instance in the presence of mediators.

Further, the investigating Officer seized 1) One Auto bearing No: TS 12 UA 7860, 2) One Splendor Plus bike bearing No.: TS 05 FK 9086 which were used for commission of offences have also been seized from the possession of his associates at his instance. In addition, Gold jewellery in all cases totaling 11.7 tolas was also seized from the possession of his associate Munavath Ramesh (A-1) at the instance of this proposed detenu and other associates.

WHEREAS, I am aware that the offender/proposed detenu field 1st bail petition in Cr No: 107/2023 of PS Madgul before the Hon'ble JFCM at Amangal on 17-08-2023 vide Crl MP No: 285/2023. Police filed counter and prosecution opposed not to grant bail to him. Accordingly, the bail petition was dismissed on 24-08-2023.

The proposed detenue again filed fresh bail petition in two ground cases vide Cr Nos: 1) 39/2023 of PS Madgul, 2) 107/2023 of PS Madgul before the Hon'ble JFCM at Amangal. Police filed counters opposing to grant bail. Even though, both the bail petitions were allowed by granting conditional bail to the proposed detenu on 05-09-2023 vide Crl MP Nos: 1) 337/2023, 2) 307/2023. Consequently, he was released in two ground cases vide release order Dis Nos: 1) 1741/2023, 2) 1742/2023 respectively. He was also granted bail in all other remaining history cases and consequently released from jail after furnishing sureties.

The conditions imposed by the Court in two ground cases are i) The offender/proposed detenu shall not tamper the witnesses/victim during the course of further investigation, ii) he is directed to appear before the Court as and when directed without fail, iii) He is directed not to leave the State without permission of the Court.

I have perused all the above conditions of the bail and however, those conditions do not affect of passing the order of detention on this proposed detenu.

On account of his antecedents, bail orders granted therein and consequently released from jail, the way he was indulging in committing chain snatching offences including sacred mangal sutras (Nuptial Chains) continuously from the neck of women folk forcibly having felt that the cases registered against him under the ordinary law have no deterrent effect in curbing his prejudicial activities, and having believed strongly that he is not amenable to ordinary law and as such, having satisfied that there is an imminent possibility of the proposed detenu indulging in similar prejudicial activities against, which would be prejudicial to the maintenance of Public Order, unless he is prevented from doing so by an appropriate order of detention.

Now therefore, in exercise of the powers conferred on me under sub section (2) of Section 3 of the "Telangana prevention, detention Act 1 of 1986 (Amendment Act No. 13 of 2018)" R/w G.O. Rt. No. 792, General Administration (Spl. Law & Order) Department, Dated : 29-05-2023, I do hereby order that the accused/proposed detenu Nenavath Ravi, who is a "Goonda" be detained from the date of service of this order on him and lodge in Central Prison, Cherlapally Medchal Dist."

6. The grounds of detention dated 12.09.2023 furnished to the appellant herein along with the order of detention referred to above read thus: -

"GROUNDS FOR DETENTION IN RESPECT OF NENAVATH RAVI UNDER THE "TELANGANA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG-OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS, LAND-GRABBERS, SPURIOUS SEED OFFENDERS, INSECTICIDE OFFENDERS, FERTILISER OFFENDERS, FOOD ADULTERATION OFFENDERS, FAKE DOCUMENT OFFENDERS, SCHEDULED COMMODITIES OFFENDERS, FOREST OFFENDERS, GAMING OFFENDERS, SEXUAL OFFENDERS, EXPLOSIVE SUBSTANCES OFFENDERS, ARMS OFFENDERS, CYBER CRIME OFFENDERS AND WHITE COLLAR OR FINANCIAL OFFENDERS ACT, 1 OF 1986 (AMENDMENT ACT NO. 13 OF 2018)"

You, Nenavath Ravi S/o. Nenavath Jagan, Age: 23 years, Occ: Coolie, R/o Indiranagar Colony, Chandrayanagutta, Hyderabad, N/o. Padamati Thanda village, Neredugumma Mandal, Nalongda District are a "Goonda" as defined in clause (g) of section 2 of the "Telangana prevention of dangerous activities of bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders, land-grabbers, spurious seed offenders, insecticide offenders, fertilizer offenders, food adulteration offenders, fake document offenders, scheduled commodities offenders, forest offenders, gaming offenders, sexual offenders, explosive substances offenders, arms offenders, cyber crime offenders and white collar or financial offenders Act 1 of 1986 (Amendment Act no. 13 of 2018)" and that you have been habitually engaging yourself in unlawful acts and indulging in committing of Property Offences, Robberies/Gold Chain Snatching offences including sacred Mangalasutras by using criminal force on women folk in Public streets continuously, repeatedly in one localised area in Madgul PS limits and thereby, creating widespread fear, panic among the general public and thus your activities are prejudicial to the maintenance of Public Order and adversely affecting the society.

Thus, in the recent past, during the year 2023, in quick succession, you along with your associates were involved in (04) offences under penal sections covered by Chapter XVII of Indian Penal Code, 1860, vide Cr.Nos.) 129/2023 U/s 379 IPC of PS

Chinthapally, 2) 39/2023 U/s 394 IPC of Madgul P.S. 3) 106/2023 Us 356, 379 IPC of Chinthapally PS and 4) 107/2023 U/s 392 IPC of Madgul P.S.

Among the above offences, (02) offences vide Cr Nos: 1) 129/2023, 2) 106/2023 were reported to be out of this Commissionerate limits and as such the above (02) offences committed by you are referred to as criminal history and not relied upon..

The remaining (02) offences committed by in Rachakonda Commissionerate limits vide Cr Nos: 1) 39/2023, 2) 107/2023 of Madgul P.S. are considered as grounds for your detention.

You had committed all the above property theft offences including gold chain snatching offences continuously, repeatedly and in quick succession which are falling within proximity period.

Thus, you have been committing offences continuously, and repeatedly in order to earn easy money to lead lavish life, which are punishable under Chapter XVII of Indian penal Code. You are also committing illegal acts (thefts) involving breach of peace and public tranquility. Your continuous presence in the area is detrimental to the maintenance of public order apart from disturbing the peace, tranquility and social harmony in the society.

THE FACTS OF THE FOLLOWING (02) ROBBERIES, THEFTS/CHAIN SNATCHING OFFENCES COMMITTED BY YOU IN THE RECENT PAST WHICH AMPLY DEMONSTRATE YOUR HABITUAL NATURE OF COMMITTING CRIME CREATING LARGE SCALE FEAR IN THE MINDS OF WOMEN COMMUNITY THEREBY RESTRAINING THEM FROM FREELY MOVING ON PUBLIC STREETS EVEN DURING BROAD DAY LIGHT AND YOUR ACTIVITIES ARE PREJUDICIAL TO THE MAINTENANCE OF PUBLIC ORDER

1) *Cr.No. 39/2023 U/s 394 IPC of Madgul Police Station Dt: 20-03-20223*

Facts of the case are that on 20.03.2023 at 19.45 hrs received a complaint from the complainant/victim Kuntala Laxmamma S/o

Anjaiah, Age 55 years, Occ: Sweeper, R/o Kolkulapally (V), Madgul (M), R.R (D) in which she stated that on 20.03.2023 at about 1800 hrs, while the complainant was on her way laid from her work place in Sri Mahalaxmi Rice Mill at Kolkulapally Gate, en-route near Jaanam well, three unknown persons aged about 25-30 years followed from her behind and started pretending as searching for Toddy, and thus, they suddenly pounced on her, pasted a plaster on her mouth and tried to remove her silver cups (vendi Kadiyalu) from her legs. But, they could not succeed and as such they robbed Rs. 7550/- from her tiffin carrier box and fled away from the place. Further, she added that she can identify them if she sees them again. Hence, she requested to take necessary action against the persons.

Basing on the above contents, a case in Cr No: 39/2023 U/s 394 IPC has been registered and taken up investigation.

During the course of investigation, the IO visited the scene of offence and recorded the details of the scene of offence observation in Crime Details Form (CDF). IO examined the complainant, other witnesses who got panicked on seeing the incident in broad day light and recorded their detailed statements.

While the investigation was in progress, it was detected by arresting the accused/proposed detenu in Cr No. 107/2023 u/s 392 IPC of Madgul PS on 12-08-2023. During the examination, he confessed his guilt of offence of the above case and other offences as well. The offender/propose detenu confessed that they spent entire booty for their lavish expenses.

<u>Role & participation of this proposed detenu:-</u>

It was made out that the offender/proposed detenu Nenavath Ravi (A-3) was sitting in rear side seat of the auto along with A-4 and they noticed a lady near Kolakulapalli village outskirts, Madgul after passing some distance A-1 Ramesh was driving the auto they forcibly took her into the bushes and when A-4 Munavath Naresh caught her legs and then proposed detenu A-3 Nenavath Ravi caught her hands and A-1 tried to rob her silver anklets but A-1 could not remove the same and as last resort, he committed theft of

Rs. 7,550/- from the complainant tiffin box and fled away into the auto. They spend entire booty for their lavish expenses.

As such, he was produced before the Hon'ble Court by executing PT warrant on 24-08-2023 and thus regularized his arrest in the case. The case is UI for collecting further evidence.

2) *Cr. No. 107/2023 U/s 392 of Madgul Police Station, Dt: 01-08-2023*

Facts of the case are that on 01-08-2023 at 1700 hours received a complaint from the complainant Smt. Nutanaganti Pullama W/o late Rama Lingaiah Age: 80 years R/o Madgul (V) & (M), R.R (D) in which she stated that on 01.08.2023 at about 1430 hours when she was sitting in front of her house and in the meantime one unknown person age about 20-30 years came to her by foot and all of a sudden he robbed her two rows Gold Nuptial Chain weighing about 03 tolas and fled away on the bike on which another unknown person was already waiting and both of them escaped on the bike towards Mall route. The person who robbed her gold chain had worn yellow colour shirt and while she raised screams, her neighbour Gandikota Jangaiah came there, but at the time both the persons escaped away from there. The complainant further stated that she can identify them if she sees them again. Hence the complainant requested to take necessary action.

Basing on the above contents, a case in CR No. 107/2023 U/s 356, 379 IPC has been registered and subsequently altered to Section 392 IPC.

During the course of Investigation, Police visited the scene of offence and recorded the details of the scene of offence observations in Crime Details Form (CDF). The IO examined the complainant and other witnesses and recorded their detailed statements.

Further, collected CC footages from the vicinity of crime scene analysed the same and through which it was identified the offender Munavath Ramesh and his associate while they were having a

recce. Upon that the IO setup informants and deputed search parties to locate the offenders.

While the investigation was in progress, the police Madgul arrested the offender/proposed detenu Nenavath Ravi on 12-08-2023 at 1230 hours Cr. No. 107/2023 of PS Madgul and produced before the Hon'ble JFCM at Amangal for judicial remand and lodged in Central Prison Cherlapally.

In pursuance of his confession, police seized stolen booty i.e. 1) Honda Shine Motor Cycle BR No: TS 05 EZ 6413 pertaining to Cr No. 129/20232 of PS Chintapally from the house of his relative in Manneguda village at his instance in the presence of mediators.

Further, the investigating Officer seized 1) One Auto bearing No: TS 12 UA 7860, 2) One Splendor Plus bike bearing No: TS 05 FK 9086 which were used for commission of offences have also been seized from the possession of his associates at his instance. In addition, Gold jewellery in all cases totaling 11.7 tolas was also seized from the possession of his associate Munavath Ramesh (A-1) at the instance of this proposed detenu and other associates. The case is UI for collecting further evidence.

<u>Linking Evidence:</u>

i) *In pursuance of his confession, Police seized stolen booty i.e. Gold pusthelathadu weighing about (03) tolas from the position of his associate Munnavat Ramesh A-1 at his instance.*

ii) *CC footages collected from the vicinity of crime scene. It can be seen his associates while they were having recce. The above evidence establishes the involvement of proposed detenu.*

<u>Role & participation of this proposed detenu:</u>

In this case, while the proposed detenu along with A4 Munavath Naresh was waiting on Sagar Highway, the offenders A-1, A2 went near the victim and forcibly robed her gold nuptial chain weighing about (03) tolas from the neck of victim woman and reached to A-

3 (propose detenu) and A-4. They gave stolen booty to A-3 and A-4 and disbursed from the spot on their vehicles.

As per clause (g) of section 2 of the "Telangana prevention, detention Act 1 of 1986 (Amendment Act No. 13 of 2018)" a "Goonda" means "a person who either by himself or as a member of or leader of gang, habitually commits or attempts to commit or abets the commission of offences, which are punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code".

You have been indulging in the offences falling under chapter XVII of IPC and you are habitually indulging in criminal activities in a manner prejudicial to the maintenance of Public Order and enforcement of ordinary penal laws could not prevent you from indulging in such activities.

After having come to know about criminal activities of proposed detenu through media and on account of chain snatching offences that were taken place in a small village of Madgul in the Commissionerate limits in recent past, the General Public especially women folk those who are going for work on daily wages in the area got panicked and apprehended fear of coming out of their houses by wearing even their sacred Gold Nuptial Threads which is sentiment to large section of Indian women. Thus, the incidents created panic in the minds of general public living in Madgul village and thereby your criminal activities are adversely affecting the Public Order and leaving large section of people under the grip of fear and shock. Therefore, your activities are required to be prevented by an appropriate detention order.

WHEREAS, I am aware that you have filed 1st bail petition in Cr No.: 107/2023 of PS Madgul before the Hon'ble JFCM at Amangal on 07-08-20 23 vide Crl MP No. 285/2023. Police filed counter and prosecution opposed not to grant bail to you. Accordingly, the bail petition was dismissed on 24-08-2023.

You have again filed fresh bail petitions in two ground cases vide CR Nos: 1) 39/2023 of PS Madgul, 2) 107/2023 of PS Madgul

before the Hon'ble JFCM at Amangal. Police filed counters opposing to grant bail. Even though, the bail petitions were allowed by granting conditional bail to you on 05-09-2023 vide Crl Mp Nos: 1) 337/2023, 2) 307/2023. Consequently, you were released in two ground cases vide release order Dis Nos: 1) 1741/2023, 2) 1742/2023 respectively. You were also granted bail in all other remaining history cases and consequently released from jail after furnishing sureties.

The conditions imposed by the Court in two ground cases are i) The offender/proposed detenu shall not tamper the witnesses/victim during the course of further investigation, ii) he is directed to appear before the court as and when directed without fail, iii) He is directed not to leave the state without permission of the Court.

I have perused all the above conditions of the bail and however, those conditions do not affect of passing the order of detention

On account of your antecedents, bail orders granted therein and consequently released from jail, the way you were indulging in committing chain snatching offences including sacred mangal sutras (nuptial chains) continuously from the neck of women folk forcibly, having felt that the cases registered against you under the ordinary law have no deterrent effect in curbing your prejudicial activities and having believed strongly that you are not amenable to ordinary law and as such, having satisfied that there is an imminent possibility of indulging in similar prejudicial activities again, which would be prejudicial to the maintenance of Public Order unless you are prevented from doing so by an appropriate order of detention.

Hence, I am satisfied that a detention Order under the provisions of the "Telangana prevention, detention Act 1 of 1986 (Amendment Act no. 13 of 2018) should be invoked against you, and you should be detained under sub-section (2) of section 3 of Act No. 1 of 1986 (Amendment Act No. 13 of 2018)" R/w G.O. Rt. No. 792, General Administration (Spl. Law & Order) Department, Dated 29-05-2023 with a view to prevent you from acting in any manner prejudicial to the maintenance of public order

You have a right to represent against this order of Detention to the 1) Detaining authority i.e. the Commissioner of Police, Rachakonda, 2) The Principal Secretary to Government (Political) General Administration Dep. Telangana, Hyderabad and 3) The Advisory Board or if you choose to make any representation, you may submit your representation with sufficient number of copies to the Jail Superintendent for onward transmission. You also have a right to appear before the Advisory Board and also to avail the assistant of a person other than a lawyer to represent your case."

7. Thus, from the aforesaid it is evident that the respondent No. 2 herein was subjectively satisfied based on the materials on record that the activities of the appellant detenu were prejudicial to the maintenance of public order. According to the Detaining Authority, i.e., the respondent No. 2, the appellant is a "GOONDA" as defined under Section 2(g) of the Act 1986 and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was felt necessary that the appellant be preventively detained.

B. IMPUGNED JUDGMENT OF THE HIGH COURT

8. The appellant detenu being aggrieved by the order of preventive detention preferred Writ Petition No. 26941 of 2023 in the High Court for the State of Telangana at Hyderabad seeking a writ of Habeas Corpus. The

High Court vide its impugned judgment and order declined to interfere and accordingly rejected the writ petition.

9. The High Court while rejecting the writ application filed by the appellant detenu made the following observations: -

> *"16. While passing the detention order, the detaining authority not only considered the commission of offences committed by the detenus and their associates, but also considered its impact disturbing 'public order' and also the modus operandi adapted by them in commission of offences. Therefore, in order to prevent the detenus from committing similar offences, the impugned detention order was passed.*
>
> *xxx xxx xxx*
>
> *21. As discussed above, the detenus have committed the aforesaid two (02) offences of robbery and chain snatchings and creating panic and scare among the public, especially in women folk. Thus, they have engaged in unlawful activities by committing the said bodily and property offences, which are serious and grave in nature, and thereby acting in a manner prejudicial to the maintenance of 'public order' as it disturbs peace and tranquility in the society. Further, the police also seized motorbikes used in commission of the offences.*
>
> *22. In view of the same, it is clear that the said acts committed by the detenus would certainly create large scale panic in general public, more particularly women folk. All the said aspects were considered by the detaining authority while passing detention order. The aspects of modus operandi and the acts committed by the detenus and their associates in commission of offences and filing of petitions by the police seeking cancellation of bail granted to the detenus were also considered by the detaining authority while passing detention order. Therefore, viewed from any angle, we are of the considered view that there is no error in impugned*

detention orders dated 12.09.2023 passed by the respondent No. 2 and the consequential approval orders passed by respondent No. 1 vide G.O.Rt. NOs. 1305 and 1306 dated 20.09.2023 respectively. Thus, the writ petitions fail and the same are liable to be dismissed."

10. Thus, the plain reading of the aforesaid line of reasoning adopted by the High Court would indicate that as the appellant detenu had engaged himself in unlawful activities of serious nature he could be said to have acted in a manner prejudicial to the maintenance of public order. The line of reasoning as above gives an impression that what weighed with the High Court are the allegations of chain snatching creating lot of fear and panic in the minds of the women folk. This according to the High Court was sufficient to reach to the conclusion that the alleged antisocial activities of the appellant detenu are prejudicial to the maintenance of the public order.

11. In such circumstances referred to above, the appellant detenu is here before this Court with the present appeal.

C. SUBMISSIONS ON BEHALF OF THE APPELLANTS

12. Mr. P. Mohith Rao, the learned counsel appearing for the appellant detenu made the following submissions:

a. Mere registration of FIRs for the offences punishable under Chapter XVII of the Indian Penal Code ("**IPC**") is not sufficient to label or brand

any individual as a "GOONDA" as defined under Section 2(g) of the Act 1986. In other words, mere registration of the FIRs for the offences of theft, robbery etc. is not sufficient to arrive at the subjective satisfaction that the alleged activities of the appellant detenu are prejudicial to the maintenance of public order.

b. As per the explanation to Section 2(a) of the Act 1986, the activities in question must cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof to be prejudicial to public order".

c. The criminal cases which have been registered against the appellant detenu involve the ordinary "law and order" problems or situations. The appellant detenu was granted bail in all the FIRs registered against him after giving an opportunity of hearing to the State. If it is the case of the State that the appellant detenu continued to indulge in the anti-social activities, the State ought to have approached the concerned court for cancellation of bail. Issuance of a preventive detention order which drastically curtails the appellant's right to liberty under Article 21 of the Constitution is certainly neither the most suitable nor the least restrictive method of preventing the appellant from engaging in any further criminal activities.

d. The impugned order of preventive detention suffers from the vice of total non-application of mind. The impugned order of detention could be said to have been vitiated on account of the extraneous matters being considered by the Detaining Authority. In the impugned order of detention the detaining authority has stated that the appellant detenu is a habitual offender as many FIRs have been registered against him, however, the Detaining Authority thought fit to take into consideration only two FIRs out of the four FIRs as the other two FIRs were registered outside the Commissionerate limits of the Detaining Authority. In other words, the offences alleged with respect to the two FIRs (not taken into consideration) were not committed within the Commissionerate limits of the Detaining Authority. This is suggestive of the fact that the detaining authority took into consideration the "history-sheet" of the detenu without recording any subjective satisfaction that such habituality has created a "public disorder". Merely, because the appellant detenu has been charged for multiple offences it cannot be said that he is in the habit of committing such offences. Habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the matrices of public order.

13. In such circumstances referred to above, the learned counsel prayed that the impugned judgment and order passed by the High Court be set side and as a consequence, the impugned order of preventive detention may also be quashed and set aside and the authorities concerned may be directed to release the appellant detenu forthwith from the detention.

D. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Mr. Kumar Vaibhav, the learned counsel appearing for the respondent made the following submissions:

a. No error much less an error of law could be said to have been committed by the High Court in passing the impugned judgment and order.

b. The order of preventive detention came to be passed by the Detaining Authority after due consideration of the entire material placed before him in the form of FIRs, CCTV camera footage, statements of various witnesses recorded in the course of the investigations, confessions of the appellant detenu before the police as regards the alleged crime, etc. It cannot be said that there was no material worth the name before the Detaining Authority to arrive at the subjective satisfaction that the activities of the appellant detenu are prejudicial.

c. Indulging repeatedly, in the activity of snatching of gold chains from the necks of women folk has created an atmosphere of panic and scare in the locality.

15. In such circumstances referred to above, the learned counsel prayed that there being no merit in this appeal, the same may be dismissed.

E. ANALYSIS

16. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the High Court committed any error in rejecting the writ petition filed by the appellant detenu and thereby affirming the order of preventive detention passed by the Detaining Authority?

17. Section 2(a) of the Act 1986 reads thus:

> *"**(a) "acting in any manner prejudicial to the maintenance of public order**" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender, Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely 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 wide-spread danger to life or public health"*

18. Section 2(g) of the Act 1986 defines the term "GOONDA":

> *"(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;"*

19. The Act 1986, has been enacted with a clear object to prevent crime and to protect the society from the anti-social elements and dangerous characters by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act 1986 are intended to deal with habitual criminals, dangerous and desperate outlaws, who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal/moral fear of punishment for crime are not sufficient deterrence for them.

20. The law is well settled that the power under any enactment relating to preventive detention has to be exercised with great care, caution & restraint. In order to pass an order of detention under the Act 1986 against any person,

the Detaining Authority must be satisfied that he is a "GOONDA" within the meaning of Section 2(g) of the Act 1986, who either by himself or as a member of or a 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 IPC as according to the explanation to Section 2(a) of the Act 1986, it is such a "GOONDA" who for the purpose of Section 2 of the Act 1986 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" and against whom an order of detention may lawfully be made.

21. Further, sub-section (1) of Section 3 confers power on the State Government and a District Magistrate or a Commissioner of Police as the case may be under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to prevent him from acting in any manner prejudicial to the maintenance of "public order".

22. In the aforesaid context, we may refer to a decision of this Court in ***Pushkar Mukherjee v. State of West Bengal*** *reported* in (1969) 1 SCC 10:

> *"13. ...Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault*

each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act. ..."

(Emphasis supplied)

23. The explanation attached to Section 2(a) of the Act 1986 reproduced above contemplates that '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 person referred to in Section 2(a) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. The Explanation to Section 2(a) also provides that for the purpose of Section 2, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is a "GOONDA" and engaged in activities which affect adversely or are likely to affect adversely

the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "GOONDA" his alleged activities are such which adversely affected the public order or are likely to affect the maintenance of public order.

24. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive about the likelihood of the detenu acting in a manner, similar to his past acts, which is likely to affect adversely the maintenance of public order and, thereby prevent him, by an order of detention, from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt, and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.

25. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See : *Haradhan Saha v. The State of W.B.,* 1974 Cri LJ 1479]

26. In Halsbury's Laws Of England, it is stated thus:—

> *"The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiate. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are*

no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."

27. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarized thus: —

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf." 'Habeas corpus' literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence."

28. In Constitutional and Administrative Law By Hood Phillips & Jackson, it is stated thus:—

"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judies and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but

> *it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae."*

29. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". 'Habeas Corpus' literally means 'have his body'. The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. "Unlike certiorari or mandamus, a writ of habeas corpus is as of right" to every man who is unlawfully detained. In India, it is

this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

30. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the person detaining and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to 'have the body' of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus, the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas Corpus is available against any person who is suspected of detaining another

unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ may be addressed to any person whatsoever an official or a private individual-who has another in his custody. The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides:—

> *"**Article 21. Protection of life and personal liberty.—***
> *No person shall be deprived of his life or personal liberty except according to the procedure established by law."*

31. We are of the view that mere registration of the two FIRs for the alleged offences of robbery etc. could not have been made the basis to invoke the provisions of the Act 1986 for the purpose of preventively detaining the

appellant herein on the assumption that he is a “GOONDA” as defined under Section 2(g) of the Act 1986. What has been alleged against the appellant detenu could be said to have raised the problems relating to law and order but we find it difficult to say that they impinged on public order. This Court has time and again, reiterated 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 activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society. Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention.

32. 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 could be affected by only such 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 degree and extent of the reach, of the act in question

on society. It is the potentiality of the act to disturb the even tempo of 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 a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, 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 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. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75.]

33. We have noticed over a period of time that in reports sponsoring preventive detention the officers concerned rely on statements of few individuals residing in the concerned locality so as to project existence of an atmosphere of panic or fear in the minds of the people residing in that locality. While recording such statements, the individuals concerned are

assured that their identity would not be disclosed so that the maker of the statement may not get into any difficulty. Some of the State enactments relating to preventive detention, for instance, Section 9 of the Gujarat Prevention of Anti-Social Activities Act, 1985, empower the Detaining Authority not to disclose facts which it considers to be against the public interest. In the case on hand, there is nothing to indicate that any such statements of people, more particularly the women of the concerned locality, were recorded so as to arrive at the subjective satisfaction that the nefarious activities of the detenu created an atmosphere of panic and fear in the minds of the people of the concerned locality. There is a good reason why we are saying so or rather touching upon this issue. It appears that in none of the FIRs the name of the detenu has been disclosed as one of the accused persons. This is but obvious because the victim from whose neck the chain is alleged to have been snatched would not know the detenu and the other associates of the detenu. In each of the FIRs, it has been stated by the victim that she would be in a position to identify the accused persons if shown to her. We wonder whether any identification parade was carried out by the police in this direction? There is nothing to indicate in this regard from the materials on record. It, *prima facie*, appears that the detenu might have been picked up by the police on suspicion and then all that has been relied upon

to point a finger towards the detenu is his confessional statement before the police. We are conscious of the fact that ordinarily the court should not get into or look into the sufficiency of the materials on record on the basis of which the requisite subjective satisfaction is arrived at by the Detaining Authority. However, the facts of the present case are such that we had to go into such issues.

34. The aforesaid gives rise to a neat question of law whether the confessional statement made by a detenu to the police officer is admissible in cases of detention under the Act 1986 or under any other enactment of any State relating to preventive detention. We do not propose to enter into any debate on this question as we have not put the counsel appearing for the parties to notice on this issue. We leave this question open to be looked into by this Court in any other appropriate matter in future.

i. Extraneous Considerations that weighed with the Detaining Authority thereby vitiating the Order of Preventive Detention.

35. We take notice of the fact that in the case on hand, the Detaining Authority has laid much stress on the fact that in the year 2023 in quick succession four FIRs came to be registered against the appellant for the offence of theft, robbery etc. However, the Detaining Authority took into

consideration only two FIRs registered for the offences said to have committed within his territorial jurisdiction. The Detaining Authority in its order of detention has clearly stated that he has taken into consideration only the two FIRs registered for the alleged offence committed within his territorial jurisdiction. The Detaining Authority in clear terms has stated that he could not have made the other two FIRs referred to in the order of detention as the basis for arriving at the subjective satisfaction that the activities of the appellant detenu are prejudicial to the maintenance of the public order. However, after saying so, the Detaining Authority has in so many words stated that the other two FIRs have been considered to look into the criminal history of the appellant detenu.

36. We are of the view that in the aforesaid context, the Detaining Authority is not correct and he could be said to have taken into consideration something extraneous.

37. In the case of ***Ameena Begum v. State of Telangana and Others*** reported in (2023) 9 SCC 587, a two-Judge Bench of this Court was confronted with almost an identical situation with which we are dealing with. In ***Ameena Begum*** (supra) this Court while considering whether there was proper application of mind to all the relevant circumstances or whether

consideration of extraneous factors had vitiated the order of detention, observed thus:

> *"50. Considering past criminal history, which is proximate, by itself would not render an order illegal. The Commissioner in the detention order made pointed reference to the detenu being a habitual offender by listing 10 (ten) criminal proceedings in which the detenu was involved during the years 2019-2020, consequent to which the detenu was preventively detained under the Act vide order of detention dated 4-3-2021, since quashed by the High Court by its order dated 16-8-2021 [Hakeem Khan v. State of Telangana, 2021 SCC OnLine TS 3663]. It is then stated therein that the detenu had committed 9 (nine) offences in the years 2022-2023, and these offences are again listed out in detail. However, the Commissioner states that the present order of detention is based only on 5 (five) out of these 9 (nine) crimes, which are alleged to show that the detenu's activities are "prejudicial to the maintenance of public order, apart from disturbing peace and tranquillity in the area".*
>
> *51. Interestingly, even in Para 9-E of his counter-affidavit, the Commissioner has extracted a portion of the detention order which we have set out in para 4. The reiteration of considering past criminal history of the detenu is not without its effect, as we shall presently discuss.*
>
> *52. In Khudiram Das [Khudiram Das v. State of W.B., (1975) 2 SCC 81 : 1975 SCC (Cri) 435] , while examining the "history sheet" of the detenu, this Court had, in express terms, clarified that a generalisation could not be made that the detenu was in the habit of committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of "public order", as discussed above. Therefore, cases where such habituality has created any "public disorder" could qualify as a ground to order detention.*

> *53. Although the Commissioner sought to project that he ordered detention based on the said 5 (five) FIRs, indication of the past offences allegedly committed by the detenu in the detention order having influenced his thought process is clear. With the quashing of the order of detention dated 4-3-2021 by the High Court and such direction having attained finality, it defies logic why the Commissioner embarked on an elaborate narration of past offences, which are not relevant to the grounds of the present order of detention. This is exactly what this Court in Khaja Bilal Ahmed [Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632 : (2020) 4 SCC (Cri) 629] deprecated. Also, as noted above, this Court in Shibban Lal Saksena [Shibban Lal Saksena v. State of U.P., (1953) 2 SCC 617 : AIR 1954 SC 179] held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to his subjective satisfaction forming the basis of the order."*
>
> (Emphasis supplied)

38. ***Ameena Begum*** (supra) has referred to and relied upon the decision of this Court in ***Khaja Bilal Ahmed v. State of Telangana and Others*** reported in (2020) 13 SCC 632. ***Khaja Bilal*** (supra) has been authored by one of us (Hon'ble Chief Justice Dr. D.Y. Chandrachud). The Court observed thus:

> *"23. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being maintained at PS Rain Bazar of Hyderabad City and the appellant "could not mend his criminal way of life" and continued to indulge in similar offences after being released on bail. In the counter-affidavit filed before the High Court, the detaining authority recorded that these cases were "referred by way of his criminal background ... (and) are not relied upon". The detaining authority stated that the cases*

which were registered against the appellant between 2009 and 2016 "are not at all considered for passing the detention order" and were "referred by way of his criminal background only". This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act, 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

(Emphasis supplied)

39. ***Ameena Begum*** (supra) has also referred to in para 53 of its judgment to the decision of this Court in ***Shibban Lal Saksena v. State of Uttar***

Pradesh and Others reported in (1953) 2 SCC 617, wherein Justice B.K. Mukherjea speaking for the Bench observed as under:

> *"8. The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides [State of Bombay v. Atma Ram Shridhar Vaidya, 1951 SCC 43 : 1951 SCR 167] . A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself in its communication dated 13-3-1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under Section 3(1)(a)of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. 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. This principle, which was recognised by the Federal Court*

> *in Keshav Talpade v. King Emperor [Keshav Talpade v. King Emperor, (1943) 5 FCR 88 : 1943 SCC OnLine FC 13] seems to us to be quite sound and applicable to the facts of this case.*"
>
> (Emphasis supplied)

40. Thus, from the aforesaid, two propositions of law are discernible. First, in the case on hand if the Detaining Authority thought fit to eschew from its consideration the two FIRs registered outside his territorial jurisdiction then he could not have made such FIRs as the basis to arrive at the subjective satisfaction that the appellant detenu is a history sheeter. Secondly, if at all the Detaining Authority wanted to take into consideration the two FIRs registered with the police station not falling within his territorial jurisdiction then he should have recorded the subjective satisfaction that the incidence of the two FIRs created "public disorder". In other words, as observed by this Court in ***Ameena Begum*** (supra) habituality of committing offence cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the matrices of "public order". It is only those cases where such habituality has created disturbance of public order that they could qualify as a ground to order detention.

41. The learned counsel appearing for the appellant detenu is also right in his submission that if it is the case of the Detaining Authority that there was no other option but to pass an order of preventive detention as the appellant

detenu came to be released by the regular criminal courts on bail then the State should have gone for cancellation of bail. Whenever, any accused is released on bail by any criminal court in connection with any offence, whether specifically said so in the order of bail while imposing conditions or not, it is implied that the bail is granted on the condition that the accused shall not indulge in any such offence or illegal activities in future. In some cases, courts do deem fit to impose one of such conditions for the grant of bail. However, even in those cases, where such a condition is not specifically imposed while granting bail it is implied that if such accused after his release on bail once again commits any offence or indulges in nefarious activities then his bail is liable to be cancelled. In the case on hand, the State instead of proceeding to pass an order of detention could have approached the courts concerned for cancellation of the bail on the ground that the appellant detenu had continued to indulge in nefarious activities and many more FIRs have been registered against him.

42. In the aforesaid context, we may refer to the decision of this Court in the case of ***Shaik Nazeen v. State of Telangana and Others*** reported in (2023) 9 SCC 633, wherein in paras 11 and 19 respectively, this Court observed as under:

"11. The detention order was challenged by the wife of the detenu in a habeas corpus petition before the Division Bench of the Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned above. The admitted position is that in all these four cases the detenu has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to be a law and order situation and not the public order situation, which would have justified invoking the powers under the preventive detention law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.

xxx *xxx* *xxx*

19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."

(Emphasis supplied)

ii. Summary of the Findings.

43. We summarize our conclusions as under: -

(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind

to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, *first* examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner

prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.

iii. The Saga Continues

44. We are dealing with a litigation arising from an order of preventive detention passed by the State of Telangana under the provisions of the Act 1986.

45. This is one more litigation going against the State of Telangana. We remind the State of Telangana of what has been observed by this Court in ***Mallada K. Sri Ram v. State of Telangana*** reported in (2023) 13 SCC 537 in para 17:

> *"17. It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards."*

46. Again, in one of the recent pronouncements of this Court in ***Ameena Begum*** (supra), this Court referring to ***Mallada K. Sri Ram*** (supra) observed in para 65 as under:

> *"65. Interference by this Court with orders of detention, routinely issued under the Act, seems to continue unabated. Even after Mallada K. Sri Ram [Mallada K. Sri Ram v. State of Telangana, (2023) 13 SCC 537 : 2022 SCC OnLine SC 424] , in another decision of fairly recent origin in Sk. Nazneen v. State of Telangana [Sk. Nazneen v. State of Telangana, (2023) 9 SCC 633] , this Court set aside the impugned order of detention dated 28-10-2021 holding that seeking shelter under preventive detention law was not the proper remedy."*

47. We hope that the State of Telangana takes what has fallen from this Court very seriously and sees to it that the orders of preventive detention are not passed in a routine manner without any application of mind.

48. We hope that the State of Telangana does not give any good reason once again to this Court to observe anything further.

iv. Role of the Advisory Board

49. At this stage, it is also apposite to mention that in such scenarios as discussed above, where orders of preventive detention are being passed by the Detaining Authority in a routine and mechanical manner, the role and duty of the Advisory Board(s) becomes all the more imperative to put a check on such capricious exercise of powers and ensure that a bright-line is drawn whereby such illegal detentions are nipped in the bud and the detenu released forthwith.

50. Advisory Board(s) under preventive detention legislations, are not a superficial creation but one of the primary constitutional safeguards available to the detenu against an order of detention. Article 22(4) mandates that, any law pertaining to preventive detention must provide for constitution of an Advisory Board consisting of persons who have been or qualified to be appointed as judges of the High Court. It further vests the Advisory Board with the pivotal role of reviewing an order of detention within three-months by forming an opinion as to whether there is a sufficient cause for such detention or not, after consideration of all the material on record including representation if any, of the detenu.

51. In Telangana also, under the Act, 1986, Section 9 gives expression to this constitutional requirement, and provides for the constitution and

composition of an Advisory Board for the purposes of the Act, the relevant provision reads as under: -

> "***9. Constitution of Advisory Boards.***
> *(1) The Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.*
>
> *(2) Every such Board shall consist of a Chairman and two other members, who are, or have been Judges or are qualified to be appointed as Judges of a High Court."*

52. Section 10 of the Act, 1986 provides for the reference and review of an order of detention passed under the Act by the Advisory Board. It states that any order of detention that has been made under the Act shall be placed before an Advisory Board thereunder within three-weeks from the date of its passing, along with the grounds on which such an order was made, the representation of the detenu if any, and the report of the officer empowered under the Act. The relevant provision reads as under: -

> "***10. Reference to Advisory Boards.***
> *In every case where a detention order has been made under this Act, the Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3."*

53. Section 11 of the Act, 1986 delineates the function to be discharged and the procedure to be adopted by the Advisory Board. It *inter-alia* states

that the Advisory Board must form an opinion and specify as to whether there is sufficient cause warranting the detention of the detenu. The Advisory Board has to form this opinion by considering all the materials placed before it in terms of Section 10 of the Act, 1986. Section 11 further empowers the Advisory Board to call for any other information or to hear the detenu, wherever necessary so as to ascertain the sufficiency of cause for preventive detention. The relevant provision reads as under: -

> "***11. Procedure of Advisory Boards.***
> *(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the Government or from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within seven weeks from the date of detention of the person concerned.*
>
> *(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.*
>
> *(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.*
>
> *(4) The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.*
>
> *(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board.*"

54. Section 12 of the Act, 1986 provides that where the Advisory Board in its report is of the opinion that sufficient cause exists warranting detention, the Government may confirm the detention i.e., it gives the appropriate Government the discretion to either confirm or revoke the order of detention. But where the Advisory Board in its report is of the opinion that no sufficient cause exists for the detention of the detenu, the same is binding on the Government, and the detenu is forthwith required to be released. The relevant observations read as under: -

> "***12. Action upon report of Advisory Board.***
> *(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 13 as they think fit.*
>
> *(2) In any case, where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.*

55. What can be discerned from a bare perusal of the abovementioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for

warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of an Advisory Board, to ensure that any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for "such detention" or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.

59. As stated by us above, preventive detention being a draconian measure, any order of detention as a result of a capricious or routine exercise of powers must be nipped in the bud. It must be struck down at the first available threshold and as such, it should be the Advisory Board that must take into consideration all aspects not just the subjective satisfaction of the detaining authorities but whether such satisfaction justifies detention of the detenu. The Advisory Board must consider whether the detention is necessary not just in the eyes of the detaining authority but also in the eyes of law.

60. The requirement of having persons who have been or are qualified to be High Court judges in the Advisory Board is not an empty formality, it is there to ensure that, an order of detention is put to robust scrutiny and

examined as it would have been by any ordinary court of law. Otherwise, the purpose of independent scrutiny could very well have been served by having any independent persons, and there would have been no need to have High Court judges or their equivalent. Thus, it is imperative that whenever an order of detention is placed before an Advisory Board, it duly considers each and every aspect, not just those confined to the satisfaction of the detaining authority but the overall legality as per the law that has been laid down by this court.

61. An Advisory Board whilst dispensing its function of ascertaining the existence of a "sufficient cause" for detention, cannot keep itself unconcerned or oblivious to the developments that have taken place by a plethora of decisions of this Court delineating the criterion required to be fulfilled for passing an order of detention. The "independent scrutiny" as envisaged by Article 22 includes ascertaining whether the detention order would withstand the scrutiny a court of law.

62. We fail to understand what other purpose the Advisory Board encompassing High Court judges or their equivalent as members would serve, if the extent of their scrutiny of the order of detention is confined just

to the subjective satisfaction of the detaining authority. The entire purpose behind creation of an Advisory Board is to ensure that no person is mechanically or illegally sent to preventive detention. In such circumstances, the Advisory Boards are expected to play a proactive role. The Advisory Board is a constitutional safeguard and a statutory authority. It functions as a safety valve between the detaining authority and the State on one hand and the rights of the detenu on the other. The Advisory Board should not just mechanically proceed to approve detention orders but is required to keep in mind the mandate contained in Article 22(4) of the Constitution of India.

63. Thus, an Advisory Board setup under a preventive detention legislation is required to undertake a proper and thorough scrutiny of an order of detention placed before it, by appreciating all aspects and angles before expressing any definite opinion in its report.

F. CONCLUSION

64. In the result, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is set aside. Consequently, the order of detention is also quashed and set aside. The appellant detenu be set at liberty forthwith if not required in any other case.

65. The connected Criminal Appeal No. ..... of 2024 @ SLP (Cri) No. 3391 of 2024 of the co-detenu is also allowed for the very same reasons and is disposed of in the aforesaid terms. The order of detention passed against the co-detenu also stands quashed and set aside. He be set at liberty forthwith if not required in any other case.

66. The Registry shall forward one copy each of this judgment to the Chief Secretary and the Principal Home Secretary of the State of Telangana at the earliest.

67. Pending application(s) if any shall stand disposed of.

..... CJI.
(Dr. Dhananjaya Y. Chandrachud)

..... J.
(J.B. Pardiwala)

..... J.
(Manoj Misra)

New Delhi
21st March, 2024