parties concerning their matrimonial relationship.

(17) First Appeal is **allowed** in terms of the above.

(2025) 3 ILRA 43
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Habeas Corpus Writ Petition No. 384 of 2024

Kapil Kasana ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Sri Arvind Srivastava, Ms. Katyaini Singh, Sri Nigamendra Shukla, Sri Pratik Kumar

Counsel for the Respondents:
A.S.G.I., G.A., Sri Prem Narayan Rai

Criminal Law - National Security Act, 1980 - Section 3 (2) - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 & 404 - Against detention order - Due to animosity of Gram Pradhan election, petitioner along with other associates committed murder of brother of informant, by firing upon him at public place carrying arms - Taking cognizance, proceedings under NSA started against all accused persons including petitioner - Held, in some cases, detenue has been acquitted whereas in some cases police found no evidence, resulted into submission of closure reports - After getting acquittal in four cases in 2010, no crime committed by detenue up to 2019, hence for period of 9 years detenue never indulged in anti-social activities - Investigating Officer mentioned about disturbance of law and order but such St.ments not given by informant and eye witnesses - Authority failed to find nexus between alleged offences and order of detention. (Para 14, 23, 26, 27)

Apprehension of D.M. that detenue who was detained in jail, likely to get bail soon and further satisfaction that he may be involved in activities prejudicial to maintenance of public order has no rational basis - Impugned order quashed. (Para 33)

Writ petition allowed. (E-13)

List of Cases cited:

1. Nenavath Bujji Vs The St. of Telangana & ors., 2024 0 Supreme (SC) 265

2. Rameshwar Shaw Vs D.M., Burdwan & anr., 1963 0 Supreme (SC) 221, (Paras 9, 10)

3. Ramesh Yadav Vs D.M., Etah & ors., 1985 0 Supreme (SC) 301

4. Shashi Aggarwal Vs St. of U.P., 1988 LawSuit (SC) 12

5. Veeri Singh Vs U.O.I. & ors., 2016 0 Supreme (All) 714

6. Alijan Mian Vs D.M., Dhanbad, AIR 1983 SC 1130

7. Ramesh Yadav Vs D.M., Etah, AIR 1986 SC 315

8. Pushkar Mukherjee Vs St. of W.B., (1969) 1 SCC 10, (Para 13)

9. Khudiram Das Vs St. of Bengal, (1975) 2 SCC 81, (Para 52)

10. Kamarunnissa Vs U.O.I.& anr. 1990 (27) ACC 621 SC, (Para 13)

11. Yumman Ongbi Lembi Leima Vs St. of Manipur & ors., Criminal Appeal No.26 of 2012 decided on 4.1.2012

12. Vijay Narain Singh Vs St. of Bihar, (1984) 3 SCC 14

13. Pebam Ningol Mikoi Devi Vs St. of Manipur, (2010) 9 SCC 618

14. Arun Ghosh Vs St. of W.B., 1970 (3) SCR 288

(Delivered by Hon'ble Nalin Kumar Srivastava, J.)

1. Heard Shri Nigmendra Shukla, learned counsel for the petitioner, Sri Prem Narain Rai, learned counsel for the Union of India and Shri Ajay Kumar Sharma, learned A.G.A. for the State respondents.

2. Present Habeas Corpus Writ Petition under Article 226 of the Constitution of India has been preferred seeking following reliefs:-

"a). issue writ, order or direction in the nature of writ of habeas corpus directing the respondents to set the petitioner at liberty after setting aside the order dated 4.3.2024 (Annexure-1) passed by the respondent no.5, namely, the District Magistrate, Ghaziabad in exercise of his power under Section 3 (2) of National Security Act, 1980.

b) issue such other order or direction which this Hon'ble Court may deem fit and proper in the case.

c). to award the cost to the petitioner."

3. The aforesaid reliefs have been prayed for on the basis of following main grounds :

(i) that the impugned detention order is a non-speaking order and as such not sustainable under law.

(ii) that no subjective satisfaction has been recorded by the District Magistrate, Ghaziabad while passing the impugned detention order.

(iii) that there may be problem of law and order and not public order.

4. The impugned detention order dated 4.3.2024 was passed by the respondent no.5 - District Magistrate, Ghaziabad under Section 3 (2) of the National Security Act, 1980 (in short 'the NSA, 1980').

5. The extracts of case diary including the statements of the witnesses recorded by the Investigating Officer have been appended with the affidavit by the petitioner.

6. It is contended by the learned counsel for the petitioner that the proceedings under the NSA, 1980 were initiated against the petitioner on the basis of F.I.R. dated 23.10.2023 registered at case crime no. 611 of 2023 under Sections 147, 148, 149, 302 and 404 IPC, P.S. Tilamod, District Ghaziabad. The incident alleged in the said F.I.R. was that the brother of the informant was shot on 22.10.2023 at about 8.30 p.m. near his house by nine named and one unknown persons including the present petitioner. In pursuance of that F.I.R. the petitioner was arrested on 24.10.2023 and he is still in jail. Subsequently, charge sheet no. 01/2024 was submitted in the matter on 19.1.2024 for the offences under Sections 147, 148, 149, 302, 404, 120-B, 34, 224, 394, 411, 307 IPC, 7 Criminal Law Amendment Act and 3/25 and 27 of the Arms Act. There were material contradictions in the statement of the wife of the deceased recorded under Section 161 CrPC from that of mentioned in the F.I.R. of this case but the learned trial court discarded the same. It is also submitted that a report was prepared by the S.H.O., P.S. Tilamod, Commissionerate, Ghaziabad on 2.3.2024,

which was forwarded to the respondent no.8 through respondent no.7, recommending action against the petitioner under Section 3(2) of the NSA, 1980. The respondent no.8 enquired into the matter and concurring with the report of respondent no.9 – S.H.O. P.S. Tilamod, recommended detention / action against the petitioner under Section 3(2) of the NSA, 1980. The respondent no.8 in his report picturized the petitioner as an anti-social criminal minded person, who by his criminal acts causes panic, fear and terror in the minds of villagers resultantly affecting the public life adversely hence, to preserve peace in the village and society and for establishment of rule of law the detention of the petitioner under the NSA, 1980 was required, as per the report of respondent no.2, sent to respondent no.5 and subsequently the impugned detention order was passed accordingly. All the concerned authorities recorded almost same findings pertaining to the present petitioner but significantly the District Magistrate, Ghaziabad passed the impugned order dated 4.3.2024 which was a non-speaking order without recording any subjective satisfaction or giving any separate finding on his part which shows the lack of independent application of mind by the District Magistrate, Ghaziabad while passing the impugned detention order.

7. It is further submitted that a representation was made by the petitioner to the District Magistrate, Ghaziabad as well as to the respondent no.1 under Section 14 of the NSA, 1980 on 9.3.2024 respectively through the Jail Superintendent but while rejecting the same, the impugned detention order was confirmed by the authorities vide orders dated 11.3.2024 and 9.4.2024. It is also urged that the impugned order dated 4.3.2024 is based upon the baseless apprehension that the petitioner's release on bail in case crime no. 611 of 2023 might cause terror in the society and the public order would be affected adversely.

8. It is vehemently submitted that to detain the petitioner on mere apprehension that it might cause threat to public life and order by committing similar criminal acts cannot the sole ground for the detention of any person under the NSA, 1980. It is also submitted that the opinion expressed by the District Magistrate while passing the impugned order is based upon premises and conjectures only and the said order is totally flimsy and vague.

9. It is further submitted that the present petitioner is having a criminal antecedent of nine cases, which are as follows :

(i) Case Crime No. 611 of 2023, under Sections 147, 148, 149, 307, 402, 120-B, 34 IPC, 7 Criminal Law Amendment Act and 3/25/27 Arms Act, P.S. Tilamod, Commissionerate Ghaziabad.

(ii) Case Crime No. 454 of 2023, under Sections 332, 353, 504, 506 IPC, P.S. Tilamod, Commissionerate Ghaziabad.

(iii) Case Crime No. 505 of 2023, under Sections 323, 504, 506 IPC, P.S. Tilamod, Commissionerate Ghaziabad.

(iv) Case Crime No. 915 of 2019, under Sections 147, 307, 504 IPC, P.S. Loni, Commissionerate Ghaziabad.

(v) Case Crime No. 1094 of 2021, under Sections 420, 34, 467, 468, 471, 511 IPC, P.S. Loni, Commissionerate Ghaziabad.

(vi) Case Crime No. 49 of 2009, under Section 307 IPC, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(vii) Case Crime No. 52 of 2009, under Section 25 Arms Act, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(viii) Case Crime No. 1180 of 2008, under Section 307 IPC, P.S. Sector 58, Commissionerate Gautambudh Nagar.

(ix) Case Crime No. 664 of 2008, under Sections 392, 411 IPC, P.S. Phase 2, Commissionerate Gautambudh Nagar.

10. It is further urged that in the cases mentioned here-in-above, the petitioner is enlarged on bail in cases mentioned at sl. nos. 2 and 3, final reports have been submitted in the cases mentioned at sl. nos. 4 and 5 and in the rest of the cases mentioned at sl. nos. 6 to 9 acquittal orders have been recorded in favour of the petitioner and further the criminal case shown at sl. no.1 is the solitary case wherein the petitioner is detained in jail and the executive authorities have a baseless apprehension that the release of the petitioner on bail in the said case may cause disturbance to the public order. It is also submitted that the detention of the petitioner without any cogent ground in jail is in fact denial of the constitutional right of the petitioner. The impugned order suffers from infirmity and illegality warranting interference by this Court.

11. In support of his submissions, learned counsel for the petitioner has placed reliance upon the following decisions:

(i). Nenavath Bujji vs. The State of Telangana and others, 2024 0 Supreme (SC) 265.

(ii). Rameshwar Shaw vs. District Magistrate, Burdwan and another, 1963 0 Supreme (SC) 221.

(iii). Ramesh Yadav vs. District Magistrate, Etah and others, 1985 0 Supreme (SC) 301.

(iv). Shashi Aggarwal vs. State of Uttar Pradesh, 1988 LawSuit (SC) 12.

(v). Veeri Singh vs. Union of India and others, 2016 0 Supreme (All) 714.

12. Per contra, learned counsel for the Union of India and the learned AGA appearing for the State vehemently submit that the petitioner is a hardened criminal having a long criminal antecedent of criminal cases of serious nature and his act is threat to the society. He is in jail in the aforesaid case crime no. 611 of 2023 under Sections 147, 148, 149, 302, 404, 120-B, 34, 224, 394, 411, 307 IPC, 7 Criminal Law Amendment Act and 3/25 and 27 of the Arms Act. It is also submitted that there is a genine apprehension to the authorities and more particularly the District Magistrate, Ghaziabad – respondent no.5 that the release of the petitioner on bail in the aforesaid case crime no. 611 of 2023, might cause disturbance in the public life and the public order may be adversely affected. It is further submitted that the District Magistrate, Ghaziabad – respondent no.5 after recording his subjective satisfaction passed the impugned order dated 4.3.2024 for detention of the petitioner under Section 3(2) of the NSA, 1980 and accordingly he was detained in district Jail, Ghaziabad. There is no infirmity, perversity or illegality in the impugned order warranting interference by this Court.

13. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

14. The factual matrix, as brought before this Court, in nutshell, is that several criminal cases pertaining to the offences of grievous nature were lodged against the petitioner. He is a man of criminal

character creating terror in the society. Due to the animosity of Gram Pradhan election the petitioner alongwith other associates committed murder of Pramod Kasana @ Lalu, the brother of the informant, by firing upon him at a public place before a large number of people carrying arms and firing of several rounds was made and the law and order and life of ordinary people was endangered and it created a complete mess in the society. Subsequently, some firearms and cartridges were retrieved by the police from other co-accused persons of the said case and proceeding under the NSA, 1980 was also initiated against co-accused Kalu @ Praveen son of Satveer by the District Magistrate, Ghaziabad vide order dated 19.2.2024 and during investigation some other accused persons wanted in the said case crime no. 611 of 2023 were also arrested by the police. Taking cognizance to the aforesaid facts, proceedings under the NSA, 1980 were started against the petitioner and the authorities concerned were under genuine apprehension that the public life might be endangered if he gets bail in the said case.

15. In the backdrop of the aforesaid facts and circumstances, we have to adjudge whether the impugned detention order dated 4.3.2024 passed by the District Magistrate, Ghaziabad is a genuine and legal order or not.

16. To scrutinize the legality of the said impugned order, it is desirable to have a glance upon Section 3(2) of the NSA, 1980 alongwith explanation, which is extracted as below :

"**3. Power to make orders detaining certain persons.--(**1) The Central Government or the State Government may,--

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or

(b) if satisfied with respect of any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.--For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act."

17. At the very outset, we have to consider whether the impugned order dated

4.3.2024 is a non-speaking order and no subjective satisfaction has been recorded by the District Magistrate, Ghaziabad and in continuation of that it is also to be seen as to whether the grounds shown by the District Magistrate, Ghaziabad while passing the impugned detention order were genuine or not.

18. The detention order dated 4.3.2024 is available on record wherein the District Magistrate, Ghaziabad has mentioned that he is satisfied that to maintain public order it is desirable to pass a detention order against the present petitioner and in view of above, the impugned detention order was passed. A perusal of the record further shows that the District Magistrate, Ghaziabad was having some apprehension that albeit the detenue is in jail in connection with case crime no. 611 of 2023 but there is likelihood of his being released on bail which may further cause a threat to the public order.

19. In view of the above, we have also paid our attention to the criminal history of the petitioner. In the petition itself the criminal antecedents of nine cases of the detenue have been explained. The record of this matter also reflects that out of the said 9 cases, four cases have ended into acquittal of the petitioner whereas in two cases the police after thorough investigation found no evidence against the petitioner and resultantly final reports were submitted by the Investigating Officer. In other two cases, the petitioner is on bail and in a solitary case as case crime no. 611 of 2023 he is detained in jail. The impugned order passed by the District Magistrate, Ghaziabad fails to show his subjective satisfaction as it is nowhere logically explained that the person, who is detained in a solitary criminal case, will certainly be granted bail and even if he is granted bail in the solitary case wherein he is in jail, how he may be a threat to the public order. The District Magistrate, Ghaziabad without any cogent material has made only a bald statement that there is likelihood of the petitioner being released on bail and the said apprehension is totally flimsy and vague and the impugned detention order is certainly based on premises and conjectures.

20. Reliance has been placed upon **Shashi Aggarwal case (supra)** by the petitioner wherein the Hon'ble Apex Court had an opportunity to deal with the matter and a primary question was raised before the Hon'ble Supreme Court in the form as to whether the detention of detenue would be justified solely on the ground that he was trying to come out on bail and there was enough possibility of his being bailed out and he would then act prejudicially to the interest of the public order. The Hon'ble Apex Court in the aforesaid case also scrutinized the issue that despite being in custody or in jail order against a person could be passed by the authority but there must be material apparently disclosed to the detaining authority which is certainly different in each and every case.

21. The District Magistrate, Ghaziabad in the instant case could not satisfy by the impugned order that what were the compelling reasons which led him to consider that although the detenue is in jail but his preventive detention is still necessary.

22. In the aforesaid case, referring to the decisions in **Alijan Mian vs. District Magistrate, Dhanbad, AIR 1983 SC 1130 and Ramesh Yadav vs. District Magistrate, Etah, AIR 1986 SC 315,** the

Hon'ble Apex Court concluded that what was stressed in the above case is that an apprehension of the detaining authority that the accused if enlarged on bail would again carry on his criminal activities is by itself not sufficient to detain a person under the National Security Act. It was further stressed that merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed.

23. It is to be noted that the crime committed by the detenue has no nexus with the order of detention passed by the District Magistrate, Ghaziabad. We find that the impugned order falls short to show as to on what basis the District Magistrate, Ghaziabad recorded his subjective satisfaction for passing of the same. The aforesaid offence registered as case crime no. 611 of 2023 is not such a case where the petitioner had been offensive to the public at large rather it was a case where a particular person is said to be shot dead by the detenue and his associates. The District Magistrate, Ghaziabad absolutely ignored the fact that in some of the cases the detenue has been acquitted by the Court whereas in some cases the police itself found no evidence at all against the detenue and the cases resulted into submission of closure reports. The District Magistrate, Ghaziabad failed to appreciate the fact that after getting acquittal in four cases in the year 2010 in the criminal cases pertaining to the years 2008 and 2009 no crime was committed by the detenue upto the year 2019 when case crime no. 915 of 2019 was registered against him and hence for a period of about 9 years having acquittal orders in his favour the detenue never indulged in any anti-social activities nor provided any threat to the public safety and order. Paragraph 22 of the affidavit appended with the petition, which explains the criminal antecedent of the detenue, is relevant in this regard. Noteably, in paragraph 41 of the counter affidavit dated 29.7.2024 the said facts have not been controverted. There was a big gap between the acquittal orders passed in the year 2010 and in case crime no. 915 of 2019 and if after being acquitted by the competent Court for a period of about 9 years no criminal history accrued to the credit of the detenue and he abstained himself to carry on any criminal activities in the area, the satisfaction of the District Magistrate, Ghaziabad that if the detenue is released on bail he would again involve himself in criminal activities causing threat to the public order, if in any condition, is supposed to be true the bail application had to be strongly opposed by the prosecution and in case bail was granted challenge against that order in the higher forum has to be raised. In our view, the petitioner, who was in jail as an under-trial prisoner, was likely to get bail could never be a good and valid ground and an order of detention merely on the aforesaid ground under the NSA, 1980 should not have been passed by the District Magistrate, Ghaziabad. There is a big difference between the apprehension of the detaining authority and his subjective satisfaction. Undisputably in the instant matter there exists a flimsy apprehension on the part of the District Magistrate, Ghaziabad and the detention order lacks his subjective satisfaction.

24. In **Nenavath Bujji case** (supra), a leading case upon the subject, it was held by the Hon'ble Apex Court that the law is settled that power under any enactment relating to preventive detention has to be exercised with great care, caution and restraint. Referring a decision in in

Pushkar Mukherjee vs. State of West Bengal, (1969) 1 SCC 10, it was so held :

"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..."

25. Further, the Hon'ble Apex Court referring another decision in **Khudiram Das vs. State of Bengal, (1975) 2 SCC 81**, also held that :

"52…...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."

26. In the case in hand, the detenue along with his other associates committed murder of the brother of the informant, as alleged, and there is nothing in the entire F.I.R. registered as case crime no. 611 of 2023 that any public disorder was caused by the criminal act committed by the petitioner and his associates. Although the Investigating Officer has recorded in the case diary that when murder of the brother of the informant was committed it affected the law and order situation but the oral statements of witnesses nowhere disclose that the incident of the murder of the brother of the informant in anyway caused public disorder and even the eye witnesses Smt. Sunita, wife of the informant, and Smt. Karuna @ Kunti, wife of the deceased and the informant himself who were also interrogated by the Investigating Officer, stated nowhere that any public disorder was caused following the said crime. Such statements find place in annexure no.6, appended with the affidavit by the petitioner. It is true that the Investigating Officer has mentioned in the case diary regarding the disturbance of law and order as a result of the crime of murder but it has not been explained as to why such statements were not given by the informant and above-mentioned eye witnesses of this

case and it is a serious dent upon the issue of subjective satisfaction on the part of the District Magistrate.

27. In fact the past record of the detenue must have a proximate and live link with the ground of detention and if it is not so such stale material/ case cannot be made a basis for passing a detention order. The District Magistrate although placed reliance on the criminal antecedents of the petitioner but he utterly failed to find out the nexus between the alleged offences and order of detention. He never bothered to make his subjective satisfaction into the allegations and facts disclosed in the report and materials placed by the police and simply passed the impugned order without proper application of independent mind.

28. The detention order further fails to show that how the District Magistrate, Ghaziabad had a reason to believe on the basis of material on record as to how there were all the possibilities of the petitioner being released on bail and further that on being so released he would indulge in the activities prejudicial to the maintenance of public order in all probabilities. It is trite law that the detention of the person concerned in jail does not preclude the authorities from passing an order of detention but such authorities must always apply their mind to the fact that the detenue is already in jail and there exist compelling reasons justifying such detention despite the fact that he was already in jail. It further requires that there must be cogent material before the detaining authority which leads to his subjective satisfaction that in near future the detenue is likely to be released from custody and after his release he would properly indulge in the activities prejudicial to the public order. The offence where for the detenue is in jail may be an issue for law and order but it is going to affect the maintenance of public order meaning thereby to affect the community and public at large. This element is certainly missing from the impugned order.

29. Hon'ble Supreme Court has laid down the principles as to when a detention order can be passed with regard to a person already in judicial custody in the case of **Kamarunnissa vs. Union of India and another 1990 (27) ACC 621 SC** and in paragraph 13 of the aforesaid case, Hon'ble Supreme Court has held as hereunder:-

"13. From the catena of decisions referred to above, it seems clear to us that even in the case of a person in custody a detention order can validly be passed(1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him(a) that there is real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in his behalf, such an order can not be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question of before a higher Court."

30. Over the issue in hand, the Hon'ble Apex Court in a leading case **Rameshwar Shaw** (supra) has held as under:

"9. It is also true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not

detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner. That is why this Court has held in Ujagar Singh v. The State of Punjab and Jagjit Singh v. The State of Punjab(1) that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

10. In this connection, it is, however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary. It would, for instance, be irrational to take into account the conduct of the person which took plate ten years before the date of his detention and say that even though after the said incident took place nothing is known against the person indicating his tendency to act in a prejudicial manner, even so on the strength of the said incident which is ten years old, the authority is satisfied that his detention is necessary. In other words, where an authority is acting bona fide and considering the question as to whether a person should be detained, he would naturally expect that evidence on which the said conclusion is ultimately going to rest must be evidence of his past conduct or antecedent history which reasonably and rationally justifies the conclusion that if the said person is not detained, he may indulge in prejudicial activities. We ought to add that it is both inexpedient and undesirable to lay down any inflexible test. The question about the validity of the satisfaction of the authority will have to be considered on the facts of each case. The detention of a person without a trial is a very serious encroachment on his personal freedom, and so, at every stage, all questions in relation to the said detention must be carefully and solemnly considered."

31. In almost similar circumstances, the Hon'ble Apex Court in **Yumman Ongbi Lembi Leima v. State of Manipur and Ors.** (Criminal Appeal No.26 of 2012 decided on 4.1.2012), held that preventive detention is not to punish a person for something he has done but to prevent him from doing it. Only on the apprehension of the detaining authority that after being released on bail, the petitioner - detenue will indulge in similar activities, which will be prejudicial to public order, order under the Act should not ordinarily be passed. The personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

32. Further, the Hon'ble Apex Court has cautioned in **Vijay Narain Singh Vs. State of Bihar, (1984) 3 SCC 14** by holding that "the law of preventive detention being a drastic and hard law, must be strictly construed and should not ordinarily be used for clipping the wings of an accused if, criminal prosecution would suffice."

33. In the case in hand the apprehension of the District Magistrate that the detenue who is detained in jail in a case crime no. 611 of 2023 is likely to get bail very soon and further, the satisfaction of the District Magistrate that after being so released on bail he may be involved in any activities prejudicial to the maintenance of public order has no rational basis. Both the elements in the impugned order are having no subjective satisfaction behind them. Subjective satisfaction, as required, must be two fold, i.e. the detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent him from so doing, as may be gathered from the dictum of law promulgated by the Hon'ble Apex Court in **Pebam Ningol Mikoi Devi v. State of Manipur, (2010) 9 SCC 618.**

34. We have no hesitation to hold that the detaining authority is always under obligation to record his subjective satisfaction on the relevant grounds and if the application of mind is made in a mechanical manner it can never fall in the category of subjective satisfaction of the detaining authority.

35. In the decision of Hon'ble Apex Court in the case of **Arun Ghosh v. State of West Bengal, 1970 (3) SCR 288, t**he question was whether the grounds mentioned in the detention order could be construed to be breach of public order and as such, the detention order could be validly made. The appellant in the said case had molested two respectable young ladies threatened their father's life and assaulted two other individuals. He was detained under Section 3(2) of the Preventive Detention Act, 1950 in order to prevent him from acting prejudicially to the maintenance of public order. It was held by the Hon'ble Apex Court that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause a disturbance of the public order, is a question of degree and the extent of the reach of the act upon society. The test is: does it lead to a disturbance of the even tempo of the life of the community so as to amount to a disturbance of the public order, or, does it affect merely an individual without affecting the tranquillity of society. Therefore, it could not be said to amount to an apprehension or breach of public order, and hence, he was entitled to be released. On the given subject, the decision in **Veeri Singh case** (supra) also helps the case of the petitioner.

36. From the above, we find that the detaining authority for the ground of detention has mentioned two grounds, firstly, that the detenue is about to get bail in case crime no. 611 of 2023 wherein he is already in jail and secondly, there was possibility of detenue indulging in similar activities prejudicial to the maintenance of public order on such release from jail. However, the detaining authority has failed to record his subjective satisfaction in the impugned order that there was real possibility of his being released on bail and

such omission is sufficient to vitiate the impugned order. Further, there is no substantive satisfaction on the part of the District Magistrate on the point that after being released on bail the detenue would repeat his criminal activities pre-judiciously affecting the maintenance of public order. The District Magistrate ignored the fact that earlier for a period of about 9 years no criminal case was registered against the detenue and in this peculiar circumstance as well what was the rational ground available to him to hold that after getting bail the detenue was going to act in any manner prejudiciously to the maintenance of public order has not been clarified in the impugned order. He also missed to draw a distinction between the areas of law & order and public order because if the petitioner was likely to harm the law & order only and it might not affect the public order, no detention order could be passed and no doubt on this point no subjective satisfaction has been recorded at the end of the detaining officer i.e. District Magistrate, Ghaziabad. On the grounds above-mentioned, the impugned order does not fall into the category of 'speaking order' as well.

37. Hence, in view of the above analysis, we are of the considered view that the detention order passed under the provisions of Section 3 (2) of National Security Act, 1980 is not sustainable under law. Resultantly, the impugned detention order dated 4.3.2024 and all the consequential orders are liable to be quashed and the same are hereby quashed.

38. The present petition is **allowed** and the petitioner/ detenue is ordered to be set at liberty by the respondents forthwith unless required in connection with any other case.

(2025) 3 ILRA 54
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.03.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI J.

Civil Misc. Review Application No. 33 of 2025
In Civil Misc. Writ Petition No. 3191 of 2019

Adeel Ahmad Khan ...Petitioner
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Petitioner:
Sri Kushmondeya Shahi, Sri Tanuj Shahi

Counsel for the Opposite Parties:
Sri Arvind Prabodh Dubey, C.S.C.

A. Civil Law-Civil Procedure Code,1908-Order XLVII Rule 1(a)-The review application filed by the petitioner was dismissed on the ground of maintainability-The court held that since the petitioner had already availed the appellate remedy by filing a Special Appeal and got it dismissed as withdrawn without seeking liberty to file a review, the review application was not maintainable in law under Order XLVII Rule 1(a) CPC-The court relied on the Supreme court's rulings in Thungabhadra Industries, Kunhayammed, and Khoday Distilleries, and held that invoking appellate jurisdiction bars a subsequent review.(Para 1 to 13)

The review application is dismissed. (E-6)

List of Cases cited:

1. Thungabhadra Industries Ltd. Vs Govt. of A.P. (1964) AIR SC 1372,

2. Kunhayammed Vs St. of Ker. (2000) 6 SCC 359

3. Khoday Distilleries Ltd. Vs Sri Mahadeshwara Sahakara Karkhane Ltd. (2019) 4 SCC 376,