PETITIONER:
KAMLAKAR PRASAD CHATURVEDI

Vs.

RESPONDENT:
STATE OF M. P. & ANR.

DATE OF JUDGMENT07/10/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 211 1984 SCR (1) 317
1983 SCC (4) 443 1983 SCALE (2)729
CITATOR INFO :
R 1984 SC1334 (2,7,18,19)
R 1985 SC 18 (14)

ACT:
National Security Act, 1980-Section 3(1) and (2)-Scope of-Detention order-Made on two or more grounds-Not to be deemed to have been made separately on each ground-Ground relating to five year old incident-Too remote and stale-Detention order vitiated.

HEADNOTE:
The petitioner who was detained under sec. 3(2) of the National Security Act, 1980, was conveyed seven grounds of detention by the Detaining Authority. The first two grounds related to the incidents that occurred more than 5 years and about 3 years respectively prior to the date of the order of detention. The petitioner challenged the order of detention as vitiated on account of the grounds of detention being vague and stale.

Allowing the writ petition by majority,

HELD: The order of detention is quashed.

(Per Chinnappa Reddy and Varadarajan, JJ.)

It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an order of detention under S 3(2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. [327 E-F]

Shalini Soni v. Union of India, AIR 1981 SC 431; Mehdi Mohamed Joudi v. State of Maharashtra, (1981) 2 S.C.C. 358; Taramati Chandulal v. State of Maharashtra AIR 1981 SC 871; and Shibban Lal Saksena v. The State of Uttar Pradesh, (1954) 4 S.C.R. 418 referred to.

In the instant case the first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated 6-5-1983. There can be no doubt that these grounds especially grounds No. 1 relating to an incident of 1978 are too remote and not proximate to the order of detention. [327 D-E]

There is no provision in the National Security Act, 1980 similar to s.5A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an order of detention under sub-sec. (1) of S.3 which has been
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made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-sec. (1) of s.3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-sec. (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. [327 F-H; 328 A]

In the present case, therefore, it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under sec. 3(2) of the Act if he had not taken into account the stale and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. [328 A-B]

(Per Desai J.)

When criminal activity of a person leads to such a drastic action as detention without trial, ordinarily a single stray incident may not unless contrary is shown be sufficient to invoke such drastic power of preventive detention. In order to avoid the charge that a stray incident was seized upon to invoke such drastic power of preventive detention the authority charged with a duty to maintain public order of assure security of the State, may keep a close watch on the activities of the miscreant for some time and repeated indulgence into prejudicial activity may permit an inference that unless preventive detention is resorted to, it would not be possible to wean away such person from such prejudicial activity. [319 G-H; 320 A-B]

In the instant case therefore, when in 1983, an action was proposed to be taken under sub-sec. (2) of sec. 3, the Detaining Authority examined the history of the criminal activity of the detenu and took into account a continuous course of conduct which may permit an inference that unless interdicted by a detention order, such activity cannot be put to an end the power under sub-sec. (2) of sec. 3 is exercised. [320 B-C]

If there is a big time lag between the last of the events leading to the detention order being made and the remote earlier event, the same cannot be treated as showing a continuity of criminal activity. But if events in close proximity with each other are taken into account for drawing a permissible inference that these are not stray or spasmodic events but disclose a continuous prejudicial activity, the reference to earlier events cannot be styled as stale or remote which would vitiate the order of detention. [320 D-E]

In the instant case if each event is examined in close proximity with each other, the events of 1978 and 1980 referred to in grounds Nos. 1 and 2 cannot be rejected as a stray or not proximate to the making of the detention order.
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But they provide the genesis of the continuity of the prejudicial activity of the detenu and they appear to have been relied upon for that limited purpose. [321 A-B]

Gora v. State of West Bengal, [1975] 2 S.C.R. 996; Smt. Rekhaben Virendra Kapadia v. State of Gujarat and Ors.,[1979] 2 S.C.C. 566; and Firrat Raza Khan v. State of Uttar Pradesh and Ors., [1982] 2 S.C.C. 449, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 584 of 1983.

(Under article 32 of the Constitution of India)

R.K. Garg and D.K. Garg for the Petitioner.

Ravindra Bana and A.K. Sanghi for the Respondent.

The following Judgments were delivered,

DESAI, J. I have very carefully gone through the opinion prepared by my learned brother Varadarajan, J. But I regret my inability to agree with the same.

All the relevant facts and the grounds on which the order of detention was made against the petitioner have been succinctly set out by my learned brother and therefore, it is not necessary to recapitulate them here. However, the only ground examined by my learned brother is that the order of detention is vitiated on account of taking into consideration grounds Nos. 1 and 2 which were stale and not proximate to the time when detention order was made and therefore, they are irrelevant, and would vitiate the order of detention. Grounds Nos. 1 and 2 relate to the events that occurred on March 20, 1978 and August 9, 1980. The order of detention is made on May 6, 1983. In between there are four other incidents involving the detenu dated July 13, 1982, July 26, 1982, September 8, 1982 and January 10, 1983. The order of detention is grounded on the subjective satisfaction of the Detaining Authority that with a view to preventing the detenu from acting in any manner prejudicial to the security of Satna City, it was necessary to detain the detenu. When criminal activity of a person leads to such a drastic action as detention without trial, ordinarily a single stray incident may not unless contrary is shown be sufficient to invoke such drastic power of preventive detention. Ordinarily, drastic power of preventive detention without trial is invoked when the normal administration of criminal justice would fail. to prevent the person so acting in a manner set out in sub-sec. (2) of Sec. 3 of the National

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Security Act, 1980. In order to avoid the charge that a stray incident seized upon to invoke such drastic power of preventive detention, the authority charged with a duty to maintain public order or assure security of the State, may keep a close watch on the activities of the miscreant for some time and repeated indulgence into prejudicial activity may permit an inference that unless preventive detention is resorted to, it would not be possible to wean away such person from such prejudicial activity. Therefore, when in 1983, an action was proposed to be taken under sub-sec. (2) of Sec. 3, the Detaining Authority examined the history of the criminal activity of the detenu and took into account a continuous course of conduct which may permit an inference that unless interdicted by a detention order, such activity cannot be put to an end the power under sub-sec. (2) of Sec. 3 is exercised. Obviously, if there is a big time lag between the last of the events leading to the detention

order being made and the remote earlier event, the same cannot be treated as showing a continuity of criminal activity. But if events in close proximity with each other are taken into account for drawing a permissible inference that these are not stray or spasmodic events but disclose a continuous prejudicial activity, the reference to earlier events cannot be styled as stale or remote which would vitiate the order of detention. In this connection, one may refer to Gora v. State of West Bengal. This Court after a review of the earlier decisions observed that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The question is whether the past activities of the detenu are such that the detaining authority can reasonably came to the conclusion that the detenu is likely to continue in his unlawful activities. This view was affirmed in Smt. Rekhaben Virendra Kapadia v. State of Gujarat and Others. In a recent decision in Firrat Raza Khan v. State of Uttar Pradesh and Ors. this Court held that when both the incidents are viewed in close proximity, the propensity of the petitioner to resort to prejudicial activity becomes manifest and the Court therefore, rejected the contention that the earlier event was not proximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order.
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Turning to the facts of this case, if each event is examined in close proximity with each other, the events of 1978 and 1980 referred to in grounds Nos. 1 and 2 cannot be rejected as a stray or not proximate to the making of the detention order. But they provide the genesis of the continuity of the prejudicial activity of the detenu and they appear to have been relied upon for that limited purpose.

I would therefore, find it difficult to quash the detention order on the short ground that incidents set out in grounds Nos. 1 and 2 are stale and would be irrelevant and therefore, the detention order is vitiated. I would therefore uphold the detention order.

VARADARAJAN, J. This writ petition under Article 32 of the Constitution is for quashing the Order of detention dated 6.5.1983 passed by the second respondent District Magistrate, Satna as being arbitrary and unreasonable and for the issue of a writ of habeas corpus directing the immediate release of the petitioner Kamlakar Prashed Chaturvedi. There is also another prayer in the petition, which cannot be granted in these proceedings, and that is to direct the first respondent State of Madhya Pradesh to pay compensation to the petitioner for the wrongful detention.

The second respondent passed the Order of detention dated 6.5.1983 against the petitioner under S. 3 (2) of the National Security Act, 1980. The grounds of detention were served on the petitioner in jail and copy thereof was served on the petitioner's brother on 6.5.1983. The following are the grounds:-

(1) On 20.3.1978 petitioner unauthorisedly entered the Nagar Mahapalika at Satna and beat the Revenue Inspector Ram Biswas Tiwari in the presence of other Government employees as a result of which those employees ran away on account of fear and a first information report has been lodged against the petitioner for offences under Ss. 323 and 353 I.P.C.;

(2) On 9.8.1980, petitioner and his associates Vijay

Shankar and three others formed themselves into an unlawful assembly and unauthorisedly entered the Badri Hotel situate at Station Road and beat Surender Kumar Srivastava with sticks and rod, as

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a result of which the customers in the hotel and passers by ran away in panic, and a first information report has been lodged against the petitioner and others for offences under Ss. 307, 147, 149 and 501 I.P.C.;

(3) On 13.7.1983, petitioner and his associate Kamlesh entered the Land Development Bank and beat Gaya Prasad Pandey in the presence of the Manager of the Bank and threatened to beat him with shoes at the road crossings in Satna and on account of the terror the staff of the Bank ran away and Gaya Prasad Pandey has not lodged any report;

(4) On 26.7.1982, petitioner unauthorisedly entered the office of the Public Works Department and tried to obtain by force approval of a wood contract from the Office Secretary R.P. Sharma and on his refusal to comply with his demand the petitioner took away papers and intended to beat the Office Secretary, and the office staff ran away due to the terror and a first information report has been lodged against the petitioner for offences under Ss. 353 and 448 I.P.C.;

(5) On 8.9.1982, petitioner unauthorisedly entered the office of the Land Development Bank at Satna and threatened to beat the Chairman Ram Asray Prasad, M.L.A. and he again threatened to beat that person on 1.10.1982 at the Guest House at Bhopal in the presence of one Gulshar Ahmed;

(6) On 1.1.1983, petitioner with his associates entered the Land Development Bank, Satna and threatened the Guard and broke the telephone and beat one Tara Chand Jain at the Dharamshala later, and a first information report was lodged at the Police Station about that incident, and on 15.1.1983 Ram Asray Prasad, M.L.A. has reported to the police at Jahangirabad, Bhopal that at the Tara Chand Jain Guest House the petitioner threatened to break his arm as a result of which Harijans employed in the Land Development Bank were feeling insecure and a

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first information report has been lodged against him on 6.1.1983;

(7) On 25.3.1983 at night, petitioner with his associates threatened Bijju Prasad Misra and Shanti Prasad Misra near Dashrath Singh garage saying that he would kill them if they gave evidence against Anup Singh and Ram Charan and a case has been registered against him on 26.3.1983 under Ss. 107 and 117 I.P.C. and a notice calling upon him to appear in the Court on 2.4.1983 had been served on him and he left the Court without signing the order sheet.

The petitioner's case is that the detention Order is politically motivated and has been passed at the instance of the Congress (I) M.L.A.Ram Asray Prasad as the petitioner is a social worker who had always raised his voice against goondas who are protected by the Congress (I) Party in Madhya Pradesh and had organised a number of rallies against the unscrupulous and uncivilized behaviour of the Block

Development Officers with illiterate and poor farmers of the State. The second respondent has passed the Order of detention mechanically without applying his mind to the facts and circumstances of the case on the basis of the first information, reports lodged against the petitioner. The grounds of detention must be precise, pertinent, proximate and relevant. Vagueness and staleness would vitiate the ground of detention as held in Shiv Prasad Bhatnagar v. State of Madhya Pradesh. All the seven grounds do not fall within the realm of public order but relate only to law and order. Grounds 1 to 4 suffer from want of proximity to the order of detention. Grounds 5 and 6 are vague. Ground 7 is irrelevant. The State Government has not considered the petitioner's representation dated 25.5.1983 expeditiously. The Order of detention contravenes Article 22 (5) of the Constitution and is consequently liable to be quashed.

The petition is opposed. The District Magistrate, Satna has contended in his counter affidavit that the petitioner's detention has been ordered because his recent activities coupled with the past incidents are prejudicial to the maintenance of public order. The Order of detention was considered necessary to prevent him from
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repeating the offences because the petitioner has a tendency to go on violating the laws. The grounds of attack made in the petition have been denied in the counter affidavit and it is stated that the State Government had considered the petitioner's representation and rejected it on 4.6.1983 and even the Advisory Board has rejected his representation.

In addition to the above grounds of attack on the Order of detention the petitioner has stated in para 13 of the Writ Petition that the Detaining Authority has not "suggested the relevant documents on the basis of which the satisfaction of passing the detention Order has been framed". Perhaps, what is meant to be conveyed by that allegation of the petitioner is that relevant documents on the basis of which the subjective satisfaction of the Detaining Authority had been reached have not been supplied to the petitioner. The learned counsel for the petitioner submitted in the course of his arguments before us that the copies of the first information reports referred to in the grounds of detention had not been supplied to the petitioner alongwith grounds of detention. The said allegation in para 13 of the Writ Petition does not naturally appear to have been understood by the second respondent who has not stated anything about it in his parawise reply in the counter affidavit.

It is not necessary to consider all the other objections raised by the petitioner in his Writ Petition as we propose to dispose of the petition on the ground of want of proximity of grounds 1 and 2, particularly ground 1 to the order of detention dated 6.5.1983. Those grounds relate to alleged incidents of 20.3.1978 and 9.8.1980 which are more than 5 years and about 2 years respectively prior to the date of the Order of detention. This Court has taken a strict view of the law of preventive detention which deprives the citizen of his freedom without a trial and full fledged opportunity for him to prove his innocence. In Shalini Soni v. Union of India to which one of us was a party, it is observed:-

> "Quite obviously, the obligation imposed on the detaining authority, by Art. 22 (5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it

the imperative implication
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that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Art. 22 (5) read with Art. 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu. The representation dated July 27, 1980 was admittedly not considered and on that ground alone the detenu was entitled to be set at liberty.

In the view that we have taken on the question of the failure of the detaining authority to consider the representation of the detenu it is really unnecessary to consider the second question raised on behalf of detenu in Criminal Writ Petition No. 4344 of 1980. However, this question has been squarely and directly raised and, indeed, it was the only question raised in the other two Criminal Writ Petitions and we have, therefore, to deal with it."

In Mehdi Mohamed Joudi v State of Maharashtra to which one of us was a party the Order of detention was set aside on the ground that the materials and documents were not supplied pari passu the grounds of detention and that there was delay of more than a month in disposing of the representation of the detenu. In Taramati Chandulal v. State of Maharashtra to which one of us was a party the Order of detention was set aside on the ground that the documents relied upon in the Order of detention were not supplied as part of the grounds alongwith the grounds of detention. In Shibban Lal Saksena v. The State of Uttar Pradesh it is observed:

"The petitioner was arrested on the 5th of January, 1953, under an order, signed by the District Magistrate of Gorakhpur, and the order expressly directed the detention of the petitioner in the custody of the Superintendent,
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District Jail, Gorakhpur, under sub-clauses (ii) and (iii) of clause (a) of section 3(1) of the Preventive Detention Act, 1950, as amended by later Acts. On the 7th of January following, the grounds of detention were communicated to the detenu in accordance with the provisions of section 7 of the Preventive Detention Act and the grounds, it appears, were of a two-fold character, falling respectively under the two categories contemplated by sub-clause (ii) and sub-clause (iii) of section 3(1) (a) of the Act. In the first paragraph of the communication it is stated that the detenu in course of speeches delivered Ghugli on certain dates exhorted and enjoined upon the cane-growers of that area not to supply sugar cane to the sugar mills or even to withhold supplies from them and thereby interfered with the maintenance of supply of sugar cane essential to the community. The other ground specified in paragraph 2 is to the effect that by using expressions, some of which were quoted under-neath the paragraph, the petitioner incited the cane-growers and the public to violence against established authority and to defiance of lawful orders and directions issued by Government officers and thereby seriously prejudiced the maintenance of public order.....

"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 of purpose of the legislative provision, cannot be challenged in a court of law except on the ground of mala fides. 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 detenu under section 7 of the Act. What was happened, however, in this case is some what peculiar. The Government itself, in its communication dated the 13th of March, 1953, has plainly admitted that one of 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,

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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 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 again 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."

The first two incidents which are of 1978 and 1980 are mentioned as grounds of detention in the order dated 6.5.1983. There can be no doubt these grounds especially ground No. 1 relating to an incident of 1978 are too remote and not proximate to the Order of detention. It is not open to the Detaining Authority to pick up an old and stale incident and hold it as the basis of an Order of detention under S. 3(2) of the Act. Nor it is open to the Detaining Authority to contend that it has been mentioned only to show that the detenu has a tendency to create problems resulting in disturbance to public order, for as a matter of fact it has been mentioned as a ground of detention. Now there is no provision in the National Security Act, 1980 similar to S. 5A of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 which says that where a person has been detained in pursuance of an Order of detention under sub-section 1 of S. 3 which has been made on two or more grounds, such Order of detention shall be deemed to have been made separately on each of such grounds and accordingly (a) such Order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, non-relevant, not connected or not proximately connected with such persons or invalid for any other reason, and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section 1 of S. 3 with reference to the remaining ground or grounds and made the order of detention and (b) the Government or officer making

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the order of detention shall be deemed to have made the order of detention under the said sub-section 1 after being satisfied as provided in that sub-section with reference to the remaining ground or grounds. Therefore in the present case it cannot be postulated what view would have been taken by the Detaining Authority about the need to detain the petitioner under section 3(2) of the Act if he had not taken into account the stale and not proximate grounds 1 and 2 into consideration in arriving at the subjective satisfaction. We are, therefore, of the opinion that the petitioner's detention is unsustainable in law. Accordingly, we quash the order of detention and direct that the petitioner be set at liberty forthwith.

H.S.K. Petition allowed.

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