

PETITIONER:
ANANTA MUKHI, @ ANANTA HARI

Vs.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT 03/02/1972

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
KHANNA, HANS RAJ
MATHEW, KUTTYIL KURIEN

CITATION:
1972 AIR 1256 1972 SCC (1) 580
CITATOR INFO :
E 1972 SC1749 (9)
R 1973 SC 300 (4,5)
R 1974 SC 255 (12)

ACT:
West Bengal (Prevention of Violent Activities) Act 1970-Sec.
3 (2) and Sec. 3(3)-Their scope.

HEADNOTE:

Petitioner, through Jail, filed a writ petition under art. 32 for a writ of habeas corpus. He was ordered to be detained u/s. 3 of West Bengal (Prevention of Violent Activities) Act, 1970, with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order. The grounds of detention were that the petitioner along with 50/60 other persons armed with lethal weapons raided the house of a person on October 4, 1969 at night and looted cash, ornaments etc., and on November 8, 1969 at about 10 p.m., the petitioner along with 20/30 associates armed with lethal weapons, raided the house of another citizen and killed his two brothers and looted ornaments etc.

It was contended on behalf of the petitioner that the detaining authority had taken into consideration facts extraneous to Sec. 3 of the Act in making the order of detention and therefore, the said order was illegal and secondly, that the order of detention showed that the District Magistrate had not duly applied his mind before making the detention order as the petitioner was detained with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order. According to the petitioner, the detaining authority was not sure as to whether the petitioner was detained for acting in any manner prejudicial to the security of the State or whether he was detained from acting in any manner prejudicial to the maintenance of public order. The District Magistrate could not make an indefinite order by using the word 'or' in the detention order and so the order was bad. Dismissing the petition,

HELD : (i) The activities of the petitioner as mentioned in the grounds of detention were not of an extraneous character but fell within, the expression acting in any manner

prejudicial to the security of State or the maintenance of public order, as defined in Sub-Section (2) of Section 3 of the Act. According to the grounds of detention, the petitioner and his associates committed offenses punishable with death or imprisonment for life or imprisonment for a term exceeding seven years or more, and as 'Such, the case of the petitioner was covered by Clause (d) of Sub-Section (2) of Section 3 of the Act. Further, the activities of the petitioner disturbed public order and the petitioner became a terror to the residents of the locality and under the circumstances, the District Magistrate was empowered to exercise his powers under Sub-Section (3) of Section 3 of the Act. [395 F]

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(ii) The Special definition given in Sub-Section (2) of Section 3 of the Act of the expression, "acting in any manner prejudicial to the security, of the State or the maintenance of public order", is of comprehensive nature and each one of the activities mentioned in the various clauses of the said sub-section constitutes an act prejudicial to the security of the State or the maintenance of public order. The presence of the word "or" in the definition itself tends to show that the use of that word in the order is not impermissible and there was no element of casualness or absence of due application of the mind in the making of the impugned order. [397 D]

Shelat J. Dissenting : The construction of the definition in S. 3(2) cannot mean that any one of the activities enumerated in Clauses (a) to (c) would fall under both the grounds, namely, the security of the State and the maintenance of public order.

An act, such as, use of or instigating to use a lethal weapon for the purpose mentioned in Clause (a) (i) or causing insult to the national flag mentioned under Clause (e) would be a ground of detention, if it either affects, or is likely to affect adversely either the security of the State or public order depending upon the potentiality and the extent of the act in question. Such use or instigation or insult to national flag, might affect only public order and on a state-wide potentiality, it might affect adversely even the security of the State. But irrespective of such reach or potentiality, the clause cannot mean that such an act in itself and without anything more must be deemed to fall under the mischief of both the kinds. The result of accepting such a construction would mean that once an act falls under any one of the clauses (a) to (e), even if it affects or is likely to affect public order only, must also be held to affect or likely to effect the security of the State thus totally wiping off the difference between the two concepts and their respective areas of influence and that could not be the intention underlying Sub-Section (2) of Sec. 3. Therefore, it must be held that the use of the disjunctive 'or' in the impugned order rendered the order of detention vague and indefinite, indicative of the detaining authority having merely reproduced mechanically the language of S. 3(1) of the Act without applying its mind properly. [389 D; 390 HI Jagannath Misra v. State of Orissa, [1966] 3 S.C.R. 134, discussed and distinguished. Dr. Ram Manohar Lohia v. State of Bihar [1966] 1 S.C.R. 709; Madhu Limaya v. S.D.O. Monghyr & Ors., [1970] 3 S.C.R. 746, State of West Bengal v. Ashok Dey & Ors, Cr. Appeal No. 217 to 223 of 1971, decided on November 19, 1971, referred to and followed. Shyamal Mandol v. State of West Bengal, A.I.R. 1971 S.C. 2384, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 322 of 1971.

R. K. Jain, for the petitioner.

G. L. Mukhoty and G. S. Chatterjee, for the respondent.

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J. M. SHELAT, J. gave a dissenting opinion. The Judgment of H. R. KHANNA and K. K. MATHEW, JJ. was delivered by KHANNA, J.

Shelat J.,

The order of detention impugned in this petition is as follows

"ORDER

No. 97/C

Dated 24-4-71

Whereas I am satisfied with respect to the person known as Shri Ananta Mukhi, @ Ananta Hari, son of Gobardhan, @ Gurai of Antpara, Chakbazir, P. S. Debra, Dt. Midnapore that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do, I therefore in exercise of the powers conferred by sub-section (1) read with sub-section (3) of section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970) make this order directing that the said Shri Ananta Mukhi @ Ananta Hari be detained. Given under my hand and seal of office.

Sd./- District Magistrate
Midnapore"

The question which falls for determination in this petition is whether detention directed by an order which recites that it was made upon satisfaction of the District Magistrate that the person concerned was acting in a manner prejudicial to the security of the State or the maintenance of public order is an order lawfully made. The argument was that the use of the disjunctive 'or', instead of the conjunctive 'and', showed either that the detaining authority was not certain under which of the two grounds, namely, the security of the State or the maintenance of public order, he had reached his subjective satisfaction, impelling him to consider the petitioner's detention necessary, or that the order was passed mechanically, merely reproducing the language of sec. 31(1) without any application of mind as to whether the acts of the petitioner, actual or anticipated, were prejudicial to the security of the State or the maintenance of public order, or both. If it was the last, obviously, the order should have used the conjunctive 'and', and not the disjunctive 'or'. To appreciate the contention, it would be necessary to understand the object and the scheme of the Act.

By a Proclamation, dated March 19, 1970, made under Art. 356 of the Constitution, the President of India, being satisfied that a situation had arisen in which government in West Bengal could

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not be carried on in accordance with the provisions of the Constitution, assumed to himself the functions of government of that State and declared that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. In pursuance of the said Proclamation, Parliament enacted, on April 29, 1970, the West Bengal State Legislature (Delegation of Powers) Act, XVII of 1970, under sec. 3 of which the State Legislature's power to make laws was conferred on the President, who was empowered to enact, whether Parliament was in session or not, as President's Act

a bill containing such provisions as he considered necessary. In exercise of the powers contained in Act XVII of 1970, the President enacted the President Act XIX of 1970. Since that Act was enacted in exercise of and in accordance with the powers of the State Legislature, the Act providing for preventive detention could be passed in terms and within the scope of entry 3 of the Concurrent List in the Seventh Schedule to the Constitution, that is to say, for reasons connected with (a) the security of that State, (b) the maintenance of public order, or (c) the maintenance of supplies and services essential to the community.

Act XIX of 1970 was enacted to "provide for detention with a view to preventing violent activities and for matters connected therewith". Sec. 3, the construction whereof is called for in this petition, by its first sub-section confers power to make detention orders against certain persons. That subsection reads as follows

"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 the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."

Its second sub-section contains a definition of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" employed in sub-section (1), and enumerates in clauses (a) to (e) diverse acts as falling within the said expression. That sub-section reads as follows :

"(2) For the purposes of sub-section (1), the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" means-

(a) using, or instigating any person by words, either spoken or written, or by signs or by visible representations or otherwise, to use, any lethal weapon-

(i) to promote or propagate any cause or ideology, the promotion or propagation of which

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affects, or is likely to affect, adversely the security of the State or the Maintenance of public order; or

(ii) to overthrow or to overawe the Government established by law in India.

Explanation.-In this clause, "lethal weapon" includes fire-arms, explosive or corrosive substances, swords, spears, daggers, bows and arrows; or

(b) committing mischief, within the meaning of section 425 of the Indian Penal Code, by fire' or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on a public building where the commission of such mischief disturbs, or is likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

Explanation-In this clause, "object of public veneration" includes any portrait or statue of an eminent Indian,

installed in a public place as a mark or respect to him or to his memory; or

(d) committing, or instigating any person to commit any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 or: the Explosive Substances Act 1908, where the commission of such offence disturbs, or is likely to disturb, public order, or

(e) in the case of a person referred to in clauses (a) to (f) of section 110 of the Code of Criminal Procedure, 1898, committing any offence punishable with imprisonment where, the commission of such offence disturbs, or is likely to disturb, public order."

Under sub-sec. (1) the satisfaction is regarding the necessity of preventing the person concerned from acting in any manner prejudicial either to the security of the State or the, maintenance 12-L887 Sup CI/72

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of public order. As the language of the sub-section stands, such satisfaction must be in relation to an activity, prejudicial either to the security of the State or the maintenance of public order, or in certain cases even both. Therefore, before the power of detention can be invoked the detaining authority must be satisfied that the activity of the person concerned is such that it is either prejudicial to the security of the State or the maintenance of public order or both.

Neither the expression "security of the State" nor "the maintenance of public order" has been defined either in this Act or in the Preventive Detention Act, IV of 1950, or the Defence of India Act, 1952 and the Rules made thereunder, which earlier made provision for preventive detention. Unlike the previous enactments, sub-sec. (2) of s. 3 in the present Act, however, furnishes a dictionary for the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order", and then enumerates in cls. (a) to (e) certain categories of acts which would fall under the aforesaid expression. The definition, however, does not provide the meaning of the two concepts "security of the State", or, "public order", and leaves the detaining authority to determine whether an act in question disturbs or is likely to disturb or endanger either of them, or both. It becomes necessary, therefore, to ascertain the connotation of these two concepts as laid down in certain judicial pronouncements. Although those pronouncements were under the Preventive Detention Act of 1950, they would, nevertheless, apply to the present Act also, since by not providing any different definition the legislative authority must be presumed to have used the expressions, security of the State and the maintenance of public order, according to their well established meanings.

In Dr. R. M. Lohia v. Bihar⁽¹⁾, the impugned detention order was passed under r. 30(1) of the Defence of India Rules, 1962 which required satisfaction of the detaining authority that the person concerned should be prevented from acting in a manner prejudicial inter alia, to the public safety and the maintenance of public order. The order impugned there stated that the authority was satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to "the public safety and maintenance of law and order". After considering the earlier decisions on the question as to the meaning of the expressions, 'law and order', 'public order' and security of the State, Hidayatullah, J., (as he then was) summed up as follows:

"The District Magistrate acted to "maintain law and order and his order could not be read differently even

(1) [1966] 1 S.C R 709.
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if there was an affidavit the other way. If he thought in terms of "public order" he should have said so in his order, or explained how the error arose. A mere reference to his earlier note was not sufficient and the two expressions cannot be reconciled by raising an air of similitude between them. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing "public order" and the smallest representing "security of State". An act may affect "law and order" but not "public order", just as an act may affect "public order" but not security of the State". Therefore, by using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

These observations clearly bring out the distinction between the three concepts, of law and order, public order and the security of the State, and the scope of each of them. The drawing up of imaginary concentric circles helps considerably in delineating the distinction between one from the other and the area covered by each of them. A similar distinction between the concept of law and order and that of public order was drawn in Pushkar Mukherjee v. West Bengal(1) by a caution therein that the expression "public order" in sec. 3(1) of the Preventive Detention Act, 1950 did not take in every infraction of law. It was observed that 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. Mere disturbance of law and order leading to disorder is not necessarily sufficient for action under the Preventive Detention Act, which can only be invoked where there is apprehended a disruption of public order. The true distinction between the three concepts lies, as pointed out in Arun Ghosh v. West Bengal(2), in the degree and extent of the reach of the act in question upon society. Acts similar in nature, but committed in different contexts and circumstances might cause different reactions. In one case, it might affect the problem of law and order, and in another, though similar in quality, of public order. (see also Nagendra Nath Mondal v. West Bengal(3). An act, such as communicating the defence secrets of a country to an enemy country, while not affecting the maintenance of law and order or public order, would affect adversely the security of the State. On the other hand, there may be activities which depending upon

(1) [1969] 2 S.C.R. 635 (2) [1970] 3 S.C.R. 288

(3) Writ Petition 308 of 1971, decided. on 13-1-72.

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the degree of their effect and potentiality might affect all the three at the same time.

The three concepts have, thus, through a catena of decisions acquired well understood meanings, and though in some cases

they might overlap to a certain extent, the distinction between them is fairly clear. When, therefore, statutes, such as the present one, confer power on an authority to deprive a citizen of his liberty, and bar at the same time any judicial scrutiny into the sufficiency of reasons for doing so, it is vital that the action depriving such liberty, without the usual trial, must not only comply with the substantive but also the formal requirements of the statute conferring such power, for, it is the latter which would show whether the former have been complied with. If the power, therefore, is exercised because a certain result, namely, danger to public order or the security of the State, is apprehended, the detaining authority ought to set out in clear terms both in the order and the grounds for detention upon which of the two apprehended results, or both, he is satisfied. Obviously, it would not be possible, without that being explicitly set out, for the person concerned to make a representation, which is the only protection and safeguard given to him under such statutes. The detaining authority has, therefore, to carefully ascertain, in order to reach his requisite satisfaction, whether the activity in question, whether actual or expected, affects or is likely to affect any one of the two things, namely, public disorder, or danger to the security of the State or both, and state so clearly in the order. It may be that the activity in question might be such that it affects or is likely to affect one or the other, or both at the same time, in which case he can state that his satisfaction was as regards both.

As is clear from the first subsection of sec. 3, that subsection confers power to make detention orders against certain persons but its exercise is conditioned by the satisfaction that if not detained, the activity of the person concerned, actual or anticipated, will affect prejudicially either the security of the State or the public order, or both. The disjunctive 'or', used there, must mean that the required satisfaction is one or the other ground, or even both. But, unlike the, earlier Acts, which provided for preventive detention, the present Act furnishes in the second sub-section of sec. 3 a definition for the expression used in the first sub-section, namely, "acting in any manner prejudicial 'to the security of the State, or the maintenance of public order", by setting out certain categories of activities which must be accepted as capable of affecting prejudicially the security of State or the public order. Using or instigating a person, orally or in writing, 'or by signs or verbal representation, or otherwise, to use any lethal'weapon either (i) to promote or propagate a cause, or ideology, the promotion or

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propagation of which affects, as is likely to affect adversely the security of the State, or the maintenance of public order, or (ii) to overthrow, or overawe the Government established by law would, according to the definition in sub-sec. (2), mean acting in a manner prejudicial to the security of the State or the maintenance of public order. It would seem from cl. (a) that acts of the kind mentioned in sub-cl. (i) would be regarded as prejudicial to public order or security of the State, as the case may be, while those mentioned in sub-cl. (ii) would be, regarded as capable of prejudicial to the security of the State. The language of cl. (a) itself suggests that besides the act being of the kind mentioned in sub-cl. (i) the authority must also be satisfied that the act there set out is one that affects, or is likely to affect adversely public

order. Under cl. (b), committing mischief, as defined in sec. 425 of the Penal Code, by fire or explosive substance on the classes of property specified there, provided again that such mischief disturbs or is likely to disturb public order, would fall under the definition. Cl. (b) thus requires two ingredients, (i) that the act in question is mischief and is committed by fire or explosive substance on property of the kind set out there, and (ii) the satisfaction of the authority that the mischief is such that it affects or is likely to affect public order. Surely, setting fire to an educational institution, or a public building, reprehensible though it is, could not possibly have been intended to mean putting the security of the State in jeopardy. Ordinarily, it might not perhaps have been considered as an act necessarily disturbing or likely to disturb public order, but sec. 3(2) makes it so, in view of the extraordinary situation then existing in West Bengal, and the background in which the Act was passed. The result is that an activity of the kind set out in cl. (b) would be regarded as a ground for an order under sub-sec. (1) provided the detaining authority is satisfied that its effect, actual or likely, is disruption of public order. It will be noticed that cl. (b) does not say that the effect of such an activity would prejudicially affect the security of the State, and refers only to public order. It is, therefore, manifest that cl. (b) does not intend the invoking of the power under sub-sec. 1 on the ground of any apprehension to the security of the State.

On the other hand, acts specified in cl. (c) might affect public order, and in some cases, even the security of the State, depending upon their extent and potentiality. An insult to the National Flag or any other object of public veneration might result in disturbance of public order, or even security of the State, depending upon the circumstances, the degree of veneration for the object in question and other such factors. In such cases, the detaining authority would have to ascertain from the facts and circumstances of each case whether the act under consideration was likely to affect one or the other, or even both. But cl. (c) is not intended

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to mean that every such act must, without anything more, be deemed to mean affecting both public order and security of the State.

Activities set out in both cls. (d) and (e) also require satisfaction of the authority that they are such that they have either disturbed or tend to disturb public order. It is again noticeable that both the clauses omit the expression "security of the State". Such an omission must mean that those activities have a bearing on and relate to public order, and not to the security of the State. Subsec. (2), by furnishing a dictionary to the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" enables the detaining authority to treat the specific categories of activities set out therein as activities capable of affecting the security of the State or the public order, and to invoke the power if it is satisfied that their effect, actual or likely, is adverse to either, or both of them, depending upon their extent or potentiality. Before, therefore, resorting to sub-sec. (1), the authority has to be satisfied whether the act or acts alleged against the person concerned fall under one or the other ground, viz., the security of the State or public disorder or under both. If the authority decides to make the order, it must state in it whether its satisfaction is

on one or the other ground, or both. The mere fact that the acts in question are of any of the kinds mentioned in cls. (a) to (e) of sub-sec. (2) does not mean that they automatically and without anything more mean acting in a manner prejudicial to the security of the State as well as maintenance of public order. It can mean either one or the other, or even both, depending upon the satisfaction of the authority as to its effect on one or the other or both. But it was said that a construction contrary to the one suggested above has been taken in *Shyamal Mondal v. West Bengal*(1) The impugned order there stated that the District Magistrate was satisfied that it was necessary that the petitioner should be detained with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order. The grounds for detention served on the detenu, as set out at page 674 of the report, show that the acts alleged against him and in respect of which the District Magistrate thought it necessary to detain him were (a) an attack on a passenger train by the petitioner and his associates, armed with bombs and explosives, with a view to catch their rivals, obviously political rivals, and to kill them, which injured some innocent passengers, (b) attack and assault on the guard of another train by the petitioner and his associates who were again armed with bombs and daggers, and (c) an attack by the petitioner and his associates, similarly armed,

(1) [1971] 2 S.C.C. 672.

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on a police party at a railway station. All the three grounds mentioned the District Magistrate's conclusion that in each case there was disturbance of public order and panic and terror amongst the passengers. There was clearly no reference to any danger or apprehension to the security of the State as the dimensions of the acts alleged were confined to the respective local areas, namely, the named railway station. The contention raised was that the acts alleged against the detenu had, no bearing on the security of the State, and that the order contained, therefore, extraneous and irrelevant matters, namely, the apprehension to the security of the State, over which, by the very nature of the acts attributed to the petitioner, and the conclusion stated by the District Magistrate in each of the grounds, he could never have reached his satisfaction. The contention was repelled on the ground "that the act itself furnishes a dictionary meaning for the two expressions and a perusal of clauses (a) to (e) clearly shows that any of the matters referred to therein will be both "prejudicial to the security of the State or the maintenance of public order". With great respect, such a construction of the definition in sec. 3 (2) would mean that any one of the activities enumerated in cls. (a) to (e) would fall under both the grounds, namely, the security of the State and the maintenance of public order, and therefore, it would not be necessary for the detaining authority to ascertain for his satisfaction whether the act for which he considers detention necessary is of the type or category which is or tends to be prejudicial to the security of the State or the maintenance of public order. In other words, any one of the acts set out in cls. (a) to (e) must be regarded as prejudicial to both the security of the State and the maintenance of public order.

If that is the meaning which is to be attributed to the definition in sec. 3 (2), the detention order, read in the light of the grounds of detention served on the petitioner there would appear to be not in accord with the realities.

For instance, an attack on a train with the object of seizing political rivals and to eliminate them would, without doubt, be one that creates public disorder, but such public disorder affects persons in the area in which it is disturbed. So far as the first ground was concerned, the attack was on a train. In the two other grounds, the areas affected were two railway stations. Would it, in the light of these confines, be realistic to

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say that the three alleged acts were such that they placed the security of the State of West Bengal in danger, or had even the tendency to do so? Further, each of the grounds of detention, as framed by the District Magistrate himself, contained his conclusion that in each case there was disturbance of public order. Obviously, the satisfaction which he had reached was that the alleged acts were such that they disturbed or tended to disturb public order. Could such acts, which even according to the District Magistrate himself led to public disorder in a particular area, be said to have led to his satisfaction that they affected or tended to affect adversely the security of the whole State as well as the maintenance of public order?

If such a construction of s. 3 (2) were to be accepted, it must lead to the result that every activity falling under any of the clauses (a) to (e) must be said to be one which actually affects or tends to affect both the security of the State as well as public order. In that case destruction of a private school, however, small in size, or an office of a village officer, once it fall within sec. 425 of the Penal Code, or committing or instigating an offence falling under cl. (d), or cl. (e) affecting or tending to affect public order must also be regarded as affecting or tending to affect the security of the State and also as leading to the satisfaction of the detaining authority that it does or is likely to do.

What sub-sec. (2) of sec. 3 does is that it considers any onto affect either the security of the State or public order, and bars a challenge that by its very nature it could not possibly lead an, reasonable person to the satisfaction required by sub-sec. (1). Use of or instigating to use a lethal weapon for the purpose mentioned in cl. (a) (i) would be a ground for detention if it either affects or is likely to affect adversely either the security of the State or public order, depending upon the potentiality and the extent of the act in question. Such use or instigation confined to a small number of persons or area might affect only public order. On a State-wide potentiality, it might affect adversely even the security of the State. Indeed, such a distinction is expressed in sub-cl. (i) and (ii) of cl. (a) itself. The same can be said of all other activities set out in the other clauses. Under cl. (c), causing insult to the national

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flag or any other object of public veneration is regarded by that Clause as acting in a manner prejudicial to the security of the State or the maintenance of public order depending upon the circumstances, the reach or the potentiality of the act in question. Such an insult on a vast scale simultaneously committed might have, the effect of creating an upsurge in the whole State and thus affect the security of the State, let alone the public order. But, irrespective of such potentiality, the clause cannot mean that such an act by itself and without anything more must be deemed to fall under the mischief of both the kinds. The result of accepting such a construction would mean that

once an act falls under any of the clauses (a) to (e), even, if it affects or is likely to affect public order only must also be, held to affect or likely to affect the security of the State, thus, totally wiping off the difference between the two concepts and their respective areas of influence. That could not be the intention underlying sub-sec. (2) of sec. 3. Taking all these circumstances into account together with the language of sub-sec. (2), the conclusion must be that the detaining authority must arrive at and express its satisfaction that the detenu's activities, actual or likely in future, were such that they would affect either the security of the State or the public order or in some cases, by reason of their reach, even both.

In this view, the construction urged by counsel for the petitioner has to be accepted and it must be held that the use of the disjunctive 'or' in the impugned order rendered the order of detention vague and indefinite, indicative of the detaining authority having merely reproduced mechanically the language of sec. 3 (1) of the Act. The detention, therefore, has to be held to be bad. The petition consequently must be accepted and the petitioner be held entitled to his liberty forthwith. Order accordingly.

Khanna, J. This is a petition through jail under article 32 of the Constitution of India for the issuance of a writ of habeas corpus by Ananta Mukhi alias Ananta Hari who has been ordered to be detained under section 3 of West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970), hereinafter referred to as the Act.

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The order of detention which was made against the petitioner reads as under : 11

ORDER

No. 97/C

Dated 24-4-71

Whereas I am satisfied with respect to the person known as Shri Ananta Mukhi @ Ananta Hari son of Gobardhan @ Gurai of Antpara, Chakbazir, P. S. Debra, Dt. Midnapore that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order, it is necessary so to do, I therefore in exercise of the powers conferred by sub-section (1) read with sub-section (3) of section 3 of the West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act No. 19 of 1970) make this order directing that the said Shri Ananta Mukhi @ Ananta Hari be detained.

Given under my hand and Seal of office.

Sd/- District Magistrate

Midnapore

Soon after the detention order, the petitioner was found to be absconding. He was arrested on May 5, 1971 and was served with the order of detention along with the ground of detention and the vernacular translation thereof on the same day. On April 26, 1971 the District Magistrate of Midnapore reported to the State Government about the making of the detention order against the petitioner together with the grounds of detention and other necessary particulars. The said report and particulars were considered by the State Government and on May 4, 1971 the detention order was approved by the State Government. On the same day the State Government submitted a report to the Central Government together with the grounds of detention and other necessary particulars. The case of the petitioner was placed by the State Government before the Advisory Board on June 3, 1971.

In the meanwhile, on May 20, 1971 the State Government received a representation of the petitioner dated May 13, 1971. The said representation was considered by the State Government and was rejected as per order dated June 2, 1971. The representation of the petitioner was then forwarded to the Advisory Board. The Advisory Board after considering the material before it, including the representation of the petitioner, and after hearing him in person, sent its report to the State Government on July 8, 1971. Opinion was expressed by the Advisory Board that there was sufficient cause for the detention of the petitioner. By an order dated July 16, 1971 the State Government confirmed the order of detention of the petitioner.

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The petition has been resisted by the respondents and the affidavit of Shri Manoranjan Dey, Assistant Secretary, Home (Special) Department, Government of West Bengal has been filed in opposition to the petition.

We have heard Mr. R. K. Jain who has argued the case amicus curiae on behalf of the petitioner and Mr. G. L. Mukhoti on behalf of the State. One of the contentions advanced by Mr. Jain is that the detaining authority has taken into consideration facts extraneous to section 3 of the Act in making the order of detention, and therefore the said order is illegal. In this respect we find that in the grounds of detention which were supplied to the petitioner under sub-section (1) of section 8 of the Act, the following particulars were mentioned :

"(1) That on 4-10-69, at about 21-30 hrs., you along with 50/60 Naxalite supporters being armed with lethal weapons raided the house of Shri Pulin Bihari Maillard of Bhuiyabasan, P. S. Debra in order to kill him. The house owner somehow managed to save his life. You and your associates then looted cash, ornaments, utensils and other properties worth about Rs. 10,000 from the house.

(2) That on 8-11-69, at about 20.00 hrs., you along with 20/22 Naxalite workers armed with lethal weapons raided the house of Shri Bistu Pada Bhuiya of Radhakantapur, P. S. Debra and killed his two brothers named Madan Bhuiya and Kshudiram Bhuiya by sharp cutting weapons. You and your associates also looted ornaments and other articles from the house."

It would appear from the above that according to the grounds of detention, the petitioner along with 50/60 other persons armed with lethal weapons raided the house of Pulin Bihari Mandal on October 4, 1969 at night time and looted cash, ornaments, utensils and other properties worth Rs. 10,000 from the house. It is further alleged that on November 8, 1969 at about 10 p.m. the petitioner along with 20/22 associates armed with lethal weapons raided the house of Bistu Pada Bhuiya of Radhakantapur and killed his two brothers Madan Bhuiya and Kshudiram Bhuiya by sharp cutting weapons and also looted ornaments and other articles from the house. The above facts would show that the case against the petitioner was covered by clause (d) of subsection (2) of section 3 of the Act. Sub-sections (1) and (2) of section 3 of the Act read as under :

"(1) The State Government may, if satisfied with respect to any person that with a view to preventing

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him from acting in any manner prejudicial to

the security of the State or the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) For the purposes of sub-section (1), the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order" means-

(a) using, or instigating any person by words, either spoken or written, or by signs or by visible representations or otherwise, to use, any lethal weapon-

(i) to promote or propagate any cause or ideology, the promotion or propagation of which affects, or is likely to affect, adversely the security of the State or the maintenance of public order; or

(ii) to overthrow or to overawe the Government established by law in India.

Explanation.-In this clause, 'lethal weapon' includes fire-arms, explosive or corrosive substances. swords, spears, daggers, bows and arrows; or

(b) committing mischief, within the meaning of section 425 of the Indian Penal Code, by fire or any explosive substance on any property of Government, or any local authority or any corporation owned or controlled by Government or any University or other educational institution or on any public building. where the commission of such mischief disturbs, or is likely to disturb, public order; or

(c) causing insult to the Indian National Flag or to any other object of public veneration, whether by mutilating, damaging, burning, defiling, destroying or otherwise, or instigating any person to do so.

Explanation.-In this clause, "object of public veneration" includes any portrait or statue of an eminent Indian, installed in a public place as a mark of respect to him or to his memory; or

(d) committing, or instigating any person to commit, any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act 1959 or the Explosive Substances Act, 1908, where

the commission of such offence disturbs, or is likely to disturb, public order; or

(e) in the case of a person referred to in clause & (a) to (f) of Section 110 of the Code of Criminal Procedure, 1898, committing any offence punishable with imprisonment where the commission of such offence disturbs, or is likely to disturb, public order."

The first allegation discloses that the petitioner and his associates were guilty of dacoity, while the second allegation shows that at the time of the commission of the offence of dacoity, the petitioner and his associates also murdered two persons. As such, according to the grounds of detention, the petitioner and his associated committed offences punishable with death imprisonment for life or

imprisonment for a term extending to seven years or more. The aforesaid activities of the petitioner, according to the affidavit of Shri Manoranjan Dey, disturbed public order and the petitioner became a terror to the residents of the locality. We see no cogent ground to take a different view. It is obvious that when such a large number of persons, who were stated to be Naxalite workers, armed with lethal weapons commit the offence of dacoity and dacoity with murder, such offences disturb or are likely to disturb public order. According to subsection (1) of section 3 of the Act, the State Government may, if so 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 the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. Sub-section (3) empowers a District Magistrate to exercise the powers, if so satisfied, conferred by sub-section (1). The activities of the petitioner as mentioned in the grounds of detention, in our opinion, show that they were not of an extraneous character but fell within the expression "acting in any manner prejudicial to the security of State or the maintenance of public order" as defined in sub-section (2) of section 3 of the Act.

The second submission of Mr. Jain is that the order of detention made by the District Magistrate shows that he has not duly applied his mind before making the detention order as according to the order the petitioner was detained "with a view to Preventing him from acting in any manner prejudicial to the security of the State or the Maintenance of public order". It is urged that the District Magistrate should have specified in the order as to whether it was necessary to detain the petitioner from acting in any manner prejudicial to the security of the State or whether it

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was necessary to detain him from acting in any manner prejudicial to the maintenance of public order. The District Magistrate, according to the learned counsel, could have also, if facts so warranted, passed an order for detention of the petitioner on both the above grounds but he could not make an indefinite order by using the word "or" in the same and stating that it was necessary to detain the petitioner with a view to preventing him from acting in any manner "prejudicial to the security of the State or the maintenance of public order". The order, it is stated, is a mechanical reproduction of the statute and shows that there was not due application of the mind before the order was made.

The above contention has been resisted by Mr. Mukhoti and, in our opinion, is not well founded. We have reproduced subsection (2) of section 3 of the Act earlier and it would appear therefrom that a comprehensive definition has been given of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". The definition shows that the whole thing has been clubbed together and no separate definitions have been given, one in respect of "acting in any manner prejudicial to the security of the State" and another in respect of "acting in any manner prejudicial to the maintenance of public order". The various acts which have been specified in the different clauses of sub-section (2) of section 3 fall within the compendious expression "acting in any manner prejudicial to the security of the State or the maintenance of public order", and it would not, in our opinion, introduce an infirmity in the detention order if it is stated therein that it is necessary to detain a detenu with

a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of Public Order.

It is no doubt true that if a statute mentions different grounds for the detention of a person, the order of detention should specify distinctly the ground or grounds for which the detenu has been ordered to be detained and it would not be permissible to state that the detenu has been ordered to be detained for ground (a) "or" ground (b). The use of the word "or" would show in cases falling under such a statute, an element of casualness in the making of the order as held by this Court in the case of Jagannath Misra v. State of Orissa.(1) The detenu in that case had been ordered to be detained under rule 30(1) (b) of the Defence of India Rules, 1962 and according to the order of detention, the order had been made with a view to preventing the detenu "from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of

(1) [1966] 3 S.C.R. 134,
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public order, India's relations with foreign powers, the maintenance of peaceful conditions in any part of India or the efficient conduct of military operations". This Court observed :

"There is another aspect of the order which leads to the same conclusion and unmistakably shows casualness in the making of the order. Where a number of grounds are the basis of a detention order, we would expect the various grounds to be joined by the conjunctive "and" the use of the disjunctive "or" in such a case makes no sense. In the present order however we find that the disjunctive "or" has been used, showing that the order is more or less a copy of s.3 (2) (15) without any application of the mind or the authority concerned to the grounds which apply in the present case."

The above principle would, however, not apply in the case of a person ordered to be detained under the Act with which we are dealing because of the special definition given in sub-section (2) of section 3 of the Act of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". According to the definition, each one of the activities mentioned in the various clauses of the said sub-section constitutes an act "prejudicial to the security of the State or the maintenance of public order". The presence of the word "or" in the definition itself tends to show that the use of that word in the order is not impermissible and there was no element of casualness or absence of due application of the mind in the making of the, impugned order.

In the case of Dr. Ram Manohar Lohia v. State of Bihar and Ors.(1), this Court while expounding the words "maintenance of public order" observed :

"one has to imagine three concentric circles :
Law and order represents the largest circle
within which is the next circle representing
public order and the smallest circle
represents the security of the State."

The above observations were relied upon by this Court in the subsequent case of Madhu Limave v. Sub-Divisional Magistrate, Monghyr and Ors.(2) and it was observed :

(1) [1966] 1 S.C.R. 709. (2) [1970] 3 S.C.R. 746.

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"The expression 'public order' includes absence of; all acts which are a danger to the security of the State and also acts which are, comprehended by the expression 'order public' explained above but not acts which disturb only the serenity of others."

In the case of State of West Bengal v. Ashok Dey & Ors. etc. etc. (Cr. Apptal No. 217 to 223 of 1971 decided on November 19, 1971) while dealing with different clauses of section 3, this Court observed :

"That, disturbance of public order in a State may in turn prejudicially affect its security, is also undeniable. Fairly close and rational nexus between these clauses and the maintenance of public order and security of the State of West Bengal is writ large on the face of these clauses."

It would follow from the above that though all activities prejudicial to the security of the State and those which are prejudicial to the maintenance of public order are not identical, because of close nexus between maintenance of public order and security of State, there is bound to be some overlapping. As the expressions "acts prejudicial to the maintenance of public order" and "acts prejudicial to the security of the State" have not been separately defined but have been put together in the same definition with the disjunctive "or" in between them, the use of the word "or" in the detention order would not, in our opinion, so adversely affect the said order as may justify the quashing of that order.

We are fortified in the above conclusion by a recent decision of this Court in the case of Shyamal Mondal v. State of West Bengal(1). In that case too the impugned order of detention stated that 'the District Magistrate was satisfied that it was necessary that, the petitioner should be detained with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order as provided by section 3 (1), of the Act. Argument was advanced on behalf of the detenu that the order of detention was illegal inasmuch as the petitioner had not been informed as to how his

(1) A.I.R. (1971) S.C. 2384.

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activity was prejudicial to the security of the State. It was pointed out that as both the matters, namely, the maintenance of public order and the security of the State had been mentioned in the order of detention, it must be taken that the detaining authority had taken into account extraneous and irrelevant matters in passing the order of detention. It was further submitted that it was not clear whether the detaining authority passed the order to prevent the detenu from acting in any manner prejudicial to the security of the State or for maintenance of public order. The above contentions were repelled by this Court and reliance was placed upon the definition given in subsection (2) of section 3 of the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". It was observed :

"It will be seen that the Act itself furnishes a dictionary meaning for the two expressions and a perusal of clauses (a) to (e) clearly shows that any of the matters referred to therein will be both "prejudicial to the security of the State or the maintenance of public order.

We are not inclined to accept the contention on behalf of the petitioner that it is only sub-clause (1) of clause (a) of section 3 (2) which deals with the matters, which adversely affects the security of the State. In fact that very sub-clause refers to the matters mentioned therein as affecting the security of the State or the maintenance of public order. Therefore, in this case the grounds of detention cannot be held to be vague nor can the order of detention be held to be invalid on the ground that the petitioner must have been detained only to prevent him from acting in any manner prejudicial to the maintenance of

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public order and not to the security of the State."

Although an attempt was made to assail the correctness of the above view, we find, for reasons stated earlier, no cogent

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ground to take a different view. The result is that the petition fails and is dismissed.

ORDER

In view of the opinion of the majority the Writ Petition is dismissed.

S.C.

Petition dismissed.

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