2026:AHC-LKO:7756-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
HABEAS CORPUS WRIT PETITION No. - 307 of 2025

Sunil Kumar Gupta Alias Sunil Chain Thru. His Son Akshit Gupta
.....Petitioner(s)

Versus

Union Of India Thru. Secy. Ministry Of Home Affairs , New Delhi And 3 Others
.....Respondent(s)

Counsel for Petitioner(s)	:	Avinash Singh Vishen, Digvijay Singh, Nadeem Murtaza, Nikhil Mishra, Sudhanshu S. Tripathi
Counsel for Respondent(s)	:	A.S.G.I., Dr. Pooja Singh, G.A.

Court No. - 11

HON'BLE ABDUL MOIN, J.
HON'BLE MRS. BABITA RANI, J.

(Dictated by Hon'ble Mrs. Babita Rani,J.)

1. Heard Sri Nadeem Murtaza, Advocate assisted by Sri Sudhanshu Tripathi, Advocate & Sri Raghav Bansal, learned counsel for the petitioner, Dr. Pooja Singh, learned counsel for the respondent no. 1 and Sri S.N.Tilahari, learned AGA appearing on behalf of the respondents no. 2 to 4.

2. The Apex Court, vide order dated 18.12.2025, passed in **Special Leave to Appeal (Crl) No. 20664 of 2025 Inre; Sunil Kumar Gupta Vs. Union of India and Ors** has requested the High Court to decide the issue of maintainability of Habeas Corpus Writ Petition within a period of four weeks from the date of receipt of a certified copy of the order which order has been received on 03.01.2026.

3. Considering the aforesaid, the matter has been heard at length.

4. Instant Habeas Corpus Writ Petition has been filed praying for a direction to the respondents to release the petitioner from the illegal detention under the National Security Act, 1980 (in short "Act, 1980"). Further prayer is for quashing the detention order dated 02.07.2024 passed under the Act, 1980 by the District Magistrate, Mathura and all consequential proceedings emanating therefrom as well as for a direction to pay appropriate compensation for the illegal detention.

5. Learned counsel for the petitioner states that on account of typographical

error in the prayer clause, the date has been indicated as 02.07.2024 rather the same should be read as 02.07.2025 as the detention order is of 02.07.2025.

6. The aforesaid statement of learned counsel for the petitioner is recorded.

7. Learned counsel for the petitioner had been required to indicate as to how the petition in the nature of Habeas Corpus would lie against the detention order passed under the Act, 1980.

8. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of **Additional Secretary to the Government of India Vs. Alka Subhas Gadia**, reported in **(1992) Supp (1) SCC 496** wherein the Apex Court has categorically held that it is always open for the detenue or anyone on his behalf to challenge the detention order by way of Habeas Corpus petition on any of the grounds available to him.

9. Dr. Pooja Singh, learned counsel for the respondent no. 1 and Sri S.N.Tilahari, learned AGA appearing on behalf of the respondents no. 2 to 4 do not dispute the aforesaid proposition of law as laid down by the Apex Court.

10. Accordingly, keeping in view the aforesaid, we find that the petition in the nature of Habeas Corpus raising a challenge to the detention order passed under the Act, 1980 is maintainable. We hold accordingly.

11. Broadly, the detention order has been challenged by the petitioner/detenue on the following grounds:

> i) The detention order has been wrongly passed by terming the 'law and order' situation as public order situation.
>
> ii) There was an inordinate and unexplained delay in deciding the representation of the detenue by the appropriate government.
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> iii) The detention order was passed despite the petitioner being already in custody and on grounds of likelihood of bail which itself vitiates the detention order.
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> iv) Detenue's/petitioner's criminal history was used as the basis of the illegal detention order.

12. Before proceedings further and examining the legality and validity of the detention order, it is important to refer to the relevant provisions of the Act. The petitioner in the instant case has been detained under Section 3 of the

Act, 1980, which deals with the power and procedure of detention under the Act. Section 8 of the Act, 1980 confers the right on the detenue to be informed of the grounds of detention as soon as may be and to be afforded the earliest opportunity of making a representation against the detention order to the appropriate government. Sections 9 to 12 deal with the Advisory Board and Section 13 provides that the maximum period of detention under the Act, 1980 shall not exceed a period of 12 months from the date of detention. Section 14 states that the power of revocation of detention lies with the State as well as Central Government.

13. For the sake of convenience, the relevant provision of the Act, 1980 are reproduced herewith:

> *"**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, or the security of India, or*
>
> *(b) if satisfied with respect to 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.

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "twenty days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

…….

8. Grounds of order of detention to be disclosed to persons affected by the order.—*(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.*

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—*(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.*

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

10. Reference to Advisory Boards*.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer*

mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section.

***11. Procedure of Advisory Boards.**—(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.*

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

***12. Action upon the report of the Advisory Board.**—(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.*

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and

cause the person concerned to be released forthwith.

14. It goes without saying that detention casts a restriction on the liberty of an individual and thus, this power has to be exercised sparingly. There can be no second opinion to the fact that the liberty guaranteed under Article 21 of the Constitution is one of the most sacred and cherished fundamental rights. Thus, the power of preventive detention must be exercised with a degree of circumspection.

15. The power of preventive detention under the Act, 1980 can only be exercised where a person acts in a manner prejudicial to public order or security of the State or in a manner prejudicial to the maintenance of supplies and services essential to the community.

16. In **Ram Bali Rajbhar vs. State of W.B. (1975) 4 SCC 47,** the Hon'ble Supreme Court has held as under,

> *"13. .... On a habeas corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact. Courts have, no doubt, to zealously guard the personal liberty of the citizen and to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities and the Advisory Board. But, this does not mean that they have to or can rightly and properly assume either the duties cast upon the detaining authorities and Advisory Boards by the law of preventive detention or function as courts of appeal on questions of fact. The law of preventive detention, whether we like it or not, is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claims of personal liberty."*

17. While the scheme of preventive detention has been recognized in the Constitution, it cannot be lost sight of that the Constitution also mandates several safeguards against the arbitrary exercise of this extraordinary power. Provisions have been made for the constitution of Advisory Boards which consist of eminent persons who are qualified to be judges of High Courts and the right to prefer a representation against the detention has also conferred upon the detenue.

18. After going through the objectives of the Act, we now proceed to analyze the arguments presented by the petitioners in light of the provisions mentioned above.

'Public Order' and 'Law and Order'

19. The learned counsel for the petitioner states that the grounds for detention, as communicated to the petitioner, indicate about disturbance of public order which has also been made a ground for invocation of the detention order apart from other grounds.

20. In this regard, learned counsel for the petitioner has taken us through the grounds for detention dated 02.07.2025 which indicate that an incident had taken place on 15.06.2025 per which the petitioner along with others had been carrying out digging and construction work at a particular spot despite objections by other residents which resulted in five houses collapsing and about half dozen houses having developed cracks. On account of collapse of the houses, three persons died including children and various persons were injured. On account of the said incident, the shopkeepers shut down their shops and jammed the road which resulted in PAC, Fire Brigade, NDRF, SDRF and senior police officials reaching on the spot and a Case Crime No. 248 of 2025 under Section 105 of Bhartiya Nyay Sanhita, 2023 was registered. Again on 16.06.2025, the residents of locality shut their shops and establishment claiming award of adequate compensation for the deceased and for the collapsed houses. It emerged that there was no permission granted towards the digging. It further emerged that despite repeated protests by the residents, the petitioner and his acquaintance had carried the construction and digging work which on account of the collapsing of the houses and death of various persons had caused fear in the society. The place of incident is situated adjacent to Shree Krishna Janam Bhoomi & Dwarkadees temple where thousands of persons visit everyday and on account of the said incident of collapsing of houses, there is large scale fear amongst the general public and on account of persons having protested for the purpose of compensation towards the collapse of houses and death, huge jam had occurred in the locality and the entire public order had been disturbed.

21. Argument of the learned counsel for the petitioner, while placing reliance on the judgment of the Apex Court in the case of **Ameena Begum Vs. State of Telengana and Ors., reported in (2023) 9 SCC 587** is that the Apex Court has categorically held that there is a difference between the "Public Order" & "Law & Order" and that the incident which has been

invoked against the petitioner while passing the detention order can atmost fall within the ambit of being an incident relating to "Law & Order" and not "public order" and thus, the respondents have wrongly passed the detention order on the basis of the act of the petitioner allegedly resulting in public disturbance of public order and on the said ground itself, the detention order merits to be set aside.

22. On the other hand, Sri S.N.Tilahari, learned AGA has placed reliance on the Division Bench judgment of this Court in the case of **Lalit Gupta and Ors Vs. Union of India, reported in MANU/UP/1067/2021** to argue that the distinction between the two concepts of "Public Order" & "Law & Order" has been lucidly explained by the Division Bench of this Court after placing reliance on the judgment of the Apex Court in the case of **Ashok Kumar Vs. Delhi Administration,** reported in **MANU/SC/0052/1982** and has thus argued that the act of the petitioner which has resulted in passing of the impugned order of detention is in fact an act of disturbance of public order and consequently, the detention order has correctly been passed.

23. Further, placing reliance on the Division Bench judgment of this Court in the case of **Mohd. Faiyyaz Mansuri Vs. Union of India, reported in 2021 (6) ALJ 247,** argument of Sri Tilahari is that it is the subjective satisfaction of the competent authority to pass an order of detention and thus the Court may not substitute its own satisfaction for that of the authority concerned and decide whether the satisfaction of the authority invoking the detention order was reasonable or proper.

24. From a perusal of the grounds of detention accompanying the detention order it emerges that the competent authority has invoked the detention order on the basis of an incident of houses having collapsed on 15.06.2025 which has resulted in the death of three persons, various houses having developed cracks and residents having resorted to demonstration and protest against the said incident and also demanding compensation for the collapsed houses and death of certain persons. Adjacent to the place of incident, two temples namely Shree Krishna Janam Bhoomi & Dwarkadees temple are situated where thousands of persons visit everyday and on account of the said incident and the road being jammed and demonstration by the residents, there is fear in the society which has resulted in disturbance in the public order.

25. The Apex Court in the case of **Ameena Begum** (supra) has held has under:-

"36. It is trite that breach of law in all cases does not lead to

public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order".

37. We may refer to the decision of the Constitution Bench of this Court in ***Ram Manohar Lohia v. State of Bihar [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709]*** *, where the difference between "law and order" and "public order" was lucidly expressed by Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words :*

> *"54. … Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. 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. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. …*
>
> *55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". 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 security of State. It is then easy to see that 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."*

(emphasis supplied)

> *38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67], is this :*
>
> > *"3. … Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"*

26. Per contra, the Division Bench judgment of this Court in the case of **Lalit Gupta (supra)**, after considering the judgment of the Apex Court in the case of **Ashok Kumar (supra)**, has held as under:-

> *"(15) The distinction between the two concepts of "public order" and "law and order" has been lucidly explained by the Apex Court in Ashok Kumar Vs. Delhi Administration : AIR 1982 SC 1143, wherein the Apex Court has observed that the true distinction between the areas of "public order" and "law and order", being fine and sometimes overlapping, does not lie in the nature or quality of the act but in the degree and extent of its reach upon society. The Apex Court has further observed that the act by itself is not determinant of its own gravity.* ***It is the potentiality of the act to disturb the even tempo of the life of the community which makes it "prejudicial to the maintenance of public order". If the contravention in its effect is confined only to a few individuals directly involved, as distinct from a wide spectrum of public, it would raise the problem of "law and order" only. It is the length, magnitude and intensity of the terror wave unleashed by a particular act or violence creating disorder that distinguishes it as an act affecting "public order" from that concerning "law and order".*** *On the facts of that case the Apex Court held that whenever there is an armed hold up by*

gangsters in a residential area of the city and persons are deprived of their belongings at the point of knife or revolver they become victims of organised crime and such acts when enumerated in the grounds of detention, clearly show that the activities of a detenue cover a wide field falling within the ambit of the concept of "public order".

(16) The Apex Court, to the aforesaid effect, has made observations in Victoria Fernandes Vs. Lalmal Sawma : AIR 1992 SC 687, wherein, relying on its earlier decisions, including Ashok Kumar Vs. Delhi Administration (supra), it was reiterated that while the expression "law and order" is wider in scope, in as much as contravention of law always affects order, "public order" has a narrower ambit and public order would be affected by only such contravention which affects the community and public at large.

(17) The distinction between violation of 'law and order' and an act that would constitute disturbing the maintenance of 'public order' had also fallen for consideration of the Apex Court in State of U.P. & Anr. Vs. Sanjay Pratap Gupta @ Pappu and others : 2004 (8) SCC 591, wherein the Apex Court, after an extensive survey of authority on the issue brought out the distinction in fine detail, which reads as under :-

> *"12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.*
>
> *13. The two concepts have well-defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of*

> *public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". (See Kuso Sah v. State of Bihar 1974 1 SCC 185, Harpreet Kaur v. State of Maharashtra 1992 2 SCC 177, T.K Gopal Alias Gopi v. State Of Karnataka 2000 6 SCC 168 and State of Maharashtra v. Mohd. Yakub 1980 2 SC 1158).*
>
> *14. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. It is not the number of acts that matters.* ***What has to be seen is the effect of the act on the even tempo of life, the extent of its reach upon society and its impact.****"*

(18) The issue has also been dealt with in the case of Sant Singh vs. District Magistrate, Varanasi : 2000 Cri LJ 2230, wherein in paragraph 7 of the report, while dealing with the point, the Apex Court has held as under :-

> *"7. The two connotations 'law and order' and 'public 'order' are not the words of magic but of reality which embrace within its ambit different situations, motives and impact of the particular criminal acts. As a matter of fact, in a long series of cases, these two expressions have come to be interpreted by the apex Court. It is not necessary to refer all those cases all over again in every decision for one simple reason that they have been quoted and discussed in earlier decision of this Court dated 14-10-1999 in Habeas Corpus Writ Petition No. 33888 of 1999- Udaiveer Singh v. State of U.P. and the decision dated 1-12-1999 in Habeas Corpus Writ Petition No. 38159 of 1999 Rajiv Vashistha v. State of U.P. (Reported in 1999 All Cri R 2777). The gamut of all the above decisions in short is*

> *that the true distinction between the areas of 'public order' and 'law and order' lies not in nature and quality of the act, but in the degree and extent of its reach upon society. Sometimes the distinction between the two concepts of law and order' and 'public order' is so fine that it overlaps. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore, touch the problem of 'law and order', while in another it might affect 'public order'. The act by itself, therefore, is not determination of its own gravity.* ***It is the potentiality of the act to disturb the even tempo of the community which makes it prejudicial to the maintenance of 'public order''***.

(19) The scope of expression "acting in any manner prejudicial to the maintenance of public order" as appearing in Sub-Section 2 of Section 3 of the Act, 1980 also came up for consideration of the Apex Court in Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, (1995) 3 SCC 237; Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat, (1999) 5 SCC 613 and Hasan Khan Ibne Haider Khan Vs. R.H. Mendonca, (2000) 3 SCC 511. The Apex Court held that the fallout, the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with the person concerned or to prevent his subversive activities affecting the community at large or a large section of the society. ***It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activities amounts only to a breach of "law and order" or it amounts to a breach of "public order"****. In Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat (supra), the Apex Court has held that the activities involving extortion, giving threat to public and assaulting businessmen near their place of work were sufficient to affect the even tempo of life of the society and in turn amounting to the disturbance of the "public order" and not mere disturbance of "law and order".*

(20) While dealing with the question as to whether one solitary instance can be the basis of an order of detention, the Apex Court

in Smt. Bimla Rani Vs. Union of India : 1989 (26) ACC 589 SC, observed that ***the question is whether the incident had prejudicially affected the 'public order'. In other words, whether it affected the even tempo of the life of the community. In Alijan Mian v. District Magistrate Dhanbad, 1983 (3) SCR 930 AIR 1983 SC 1130 it was held that even one incident may be sufficient to satisfy the detaining authority in this regard, depending upon the nature of the incident.*** *Similar view has been expressed in the host of other decisions. The question was answered more appropriately and with all clarity in the case of Attorney General of India v. Amratlal Prajivandas : AIR 1994 SC 2179, wherein the Apex Court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioners that since it is solitary incident of the petitioners, he deserves sympathy, is rejected. Now the law, as it stands, is that even one solitary incident may give rise to the disturbance of 'public order'. It is not the multiplicity but the fall out of various criminal acts. Though there is consistency in the various decisions of the apex Court about the interpretation of the expressions of 'law and order' and 'public order' undue insistence on the case law is not going to pay any dividend as each case revolves round its own peculiar facts and has to be viewed in the light of the various attending factors. It is difficult to find a case on all fours with the case in hand."*

(emphasis by the Court)

27. From a perusal of the aforesaid judgments it clearly emerge that although breach of law in all cases does not lead to public disorder and that 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**. From the incident which has occurred on 15.06.2025 it clearly emerges that it is the **public at large** which has been affected.

28. Perusal of the Division Bench judgment of this Court in the case of **Lalit Gupta (supra)** also indicates that where potentiality of the act is to disturb the even tempo of the life of the community, it would be "prejudicial to the maintenance of public order" and that public order would be affected by

only such contravention which affects the community or the public at large.

29. Clearly, the ground of detention indicate that the action of the petitioner on the fateful date i.e 15.06.2025 has resulted in disturbance of the public order, even tempo of the life of the community and has affected the community and public at large. Even otherwise, the Division Bench of this Court in the case of **Mohd. Faiyyaz Mansuri** (supra) has held that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper or whether in the circumstances of the matter, the person concerned should have been detained or not.

30. For the sake of convenience, the relevant observations of the Division Bench of this Court in the case of **Mohd. Faiyyaz Munsuri** (supra) are reproduced below:-

> *"(25) To sum up, a law of preventive detention is not invalid because it prescribes no objective standard for ordering preventive detention, and leaves the matter to subjective satisfaction of the Executive. The reason for this view is that preventive detention is not punitive but preventive and is resorted to with a view to prevent a person from committing activities regarded as prejudicial to certain objects that the law of preventive detention seeks to prescribe. Preventive detention is, thus, based on suspicion or anticipation and not on proof. The responsibility for security of State, or maintenance of public order, or essential services and supplies, rests on the Executive and it must, therefore, have necessary powers to order preventive detention. Having said that, subjective satisfaction of a detaining authority to detain a person or not, is not open to objective assessment by a Court. A Court is not a proper forum to scrutinize the merits of administrative decision to detain a person. The Court cannot substitute its own satisfaction for that of the authority concerned and decide whether its satisfaction was reasonable or proper, or whether in the circumstances of the matter, the person concerned should have been detained or not. It is often said and held that the Courts do not even go into the question whether the facts mentioned in grounds of detention are correct or false. The reason for the rule is that to decide this, evidence may have to be taken by the Courts and that is not the*

> *object of law of preventive detention. This matter lies within the competence of Advisory Board. While saying so, this Court does not sit in appeal over decision of detaining authority and cannot substitute its own opinion over that of detaining authority when grounds of detention are precise, pertinent, proximate and relevant.*
>
> *(26) It is apt to mention here that our Constitution undoubtedly guarantees various freedoms and personal liberty to all persons in our Republic. However, it should be kept in mind by one and all that the constitutional guarantee of such freedoms and liberty is not meant to be abused and misused so as to endanger and threaten the very foundation of the pattern of our free society in which the guaranteed democratic freedom and personal liberty is designed to grow and flourish. The larger interests of our multi-religious nation as a whole and the cause of preserving and securing to every person the guaranteed freedom peremptorily demand reasonable restrictions on the prejudicial activities of individuals which undoubtedly jeopardize the rightful freedoms of the rest of the society. Main object of Preventive Detention is the security of a State, maintenance of public order and of supplies and services essential to the community demand, effective safeguards in the larger interest of sustenance of peaceful democratic way of life.*

31. Considering the aforesaid, the said ground is found to be misconceived and rejected.

Regarding the alleged delay in deciding the representation

32. Another contention which is pressed into service by the Learned counsel for the petitioner is that there was an inordinate delay in deciding his representation by the concerned authorities, namely the District Magistrate, Mathura, State Government and the Central Government. The learned counsel for the petitioner has vehemently submitted that a detenue has a right to have his representation determined by all the three authorities in a timely manner, whereas the authorities took unexplained 24 days to process his application, thereby violating his right to liberty. Per contra, the learned counsels for the respondents contended that there was no delay caused in deciding the representation of the petitioner and the entire procedure was carried out promptly and in the minimum time frame as provided under the Act, 1980.

33. The respondents have further contended that the Act nowhere stipulates any time frame for deciding the representation and does not require the state authorities to explain day-to-day delay. However, the respondent authorities have decided the representation of the petitioner with utmost urgency at every step.

34. The right to prefer representation against the order of detention stems from Article 22(5) of the Constitution itself which states that a person being detained has to be afforded the earliest opportunity to make representation against such detention. This right is a valuable constitutional right, violation of which would certainly render a detention illegal. Further, Section 8 of the Act, 1980 reaffirms the right of the detenue to be afforded the 'earliest' opportunity of making a representation against the detention order.

35. So far as the contention of the respondents that since no definite time frame has been fixed by the Act, 1980 for deciding the representation of the detenue and thus, the Courts cannot call upon the state to explain the delay is concerned, we do not agree with such a view. It has been settled through several pronouncements that the power of detention is to be sparingly exercised as it partakes the nature of an unusual restriction on the liberty of an individual. The right to make representation is a safeguard against the arbitrary exercise of this power and thus, it is the duty of the courts to ensure that such a right is provided to a detenue in a real and effective manner, which also includes the right to have the representation decided within a reasonable time frame.

36. In **Sarabjeet Singh Mokha v. District Magistrate, Jabalpur, (2021) 20 SCC 98,** the Hon'ble Supreme Court, while emphasizing on the importance of expeditious consideration of the representation of the detenue by the concerned Government, made the following observations:

> *"47. By delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously.* ***As we have noted earlier, the communication of the grounds of detention to the detenu "as soon as may be" and the affording to the detenu of the earliest opportunity of making a representation against the order of detention to the appropriate government are intended to ensure that the representation of the detenu is considered by the appropriate government with a sense of immediacy.*** *The State Government failed to do so. The making of a reference to the Advisory Board could not have furnished any justification for*

the State Government to not deal with the representation independently at the earliest. The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA. The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution."

(Emphasis added by Court)

37. In **Abdulla Kunni & Another v. Union of India (1991) 1 SCC 476,** the Hon'ble Supreme Court made the following observations regarding the rights of a detenue as emanating from Article 22(5) of the Constitution of India:

"7. The detenu has two rights under clause (5) of Article 22 of the constitution: (i) to be informed, as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (ii) to be afforded the earliest opportunity of making a representation against the order of detention."

38. We are also conscious of the fact that no strict formula can be applied to determine whether delay has occurred in deciding the representation or not. This has to be determined in view of the facts of each case and the delay, if any, has to be tested on the anvil of reasonableness. The statute may or may not prescribe any fixed time period for deciding the representation. However, since the power of detention is of a hard and exceptional nature, it is expected that the authorities will act in an expeditious manner and any delay would be accompanied by a reasonable explanation.

39. In **L.M.S. Ummu Saleema vs B.B. Gujaral & Anr (1981) 3 SCC 317,** the Hon'ble Supreme Court made the following observations regarding the principle of explaining day to day delay in deciding the representation of a detenue:

"7. Another submission of the learned counsel was that there was considerable delay in the disposal of the representation by the detaining authority and this was sufficient to vitiate the detention.

The learned counsel submitted that the detaining authority was under an obligation to adequately explain each day's delay and our attention was invited to the decisions in Pritam Nath Hoon v. Union of India & Others and in Shanker Raju Shetty v. Union of India. ***We do not doubt that the representation made by the detenu has to be considered by the detaining authority with the utmost expedition but as observed by one of us in Francis Coralie Mullin v. W.C. Khambra. "The time imperative can never be absolute or obsessive". The occasional observations made by this Court that each day's delay in dealing with the representation must be adequately explained are meant to emphasise the expedition with which the representation must be considered and not that it is a magical formula, the slightest breach of which must result in the release of the detenu. Law deals with the facts of life. In law, as in life, there are no invariable absolutes. Neither life nor law can be reduced to mere but despotic formulae.*** *Considered in that light, can it be said that there was an unreasonable delay in the present case? The representation was despatched on 5.2.1981 and was received in the office of the detaining authority on 13.2.1981. Apparently it was in postal transit from 5th to 13th. It was put up before the detaining authority on 19.2.1981 and disposed of that very day. From the records produced before us we notice that the detaining authority, Shri B.B. Gujral, was not available from 13th to 16th as he had gone abroad. He returned on 16th and considered the matter on 19th. The learned counsel for the detenu urged that the absence of the detaining authority from India cannot be allowed to violate the fundamental right of the detenu to have his representation considered with the utmost expedition. We agree that in such cases appropriate arrangements must be made for considering the detenu's representation. Apparently, it was not thought necessary in the present case as Shri Gujral was returning on 16th, that is, within a few days. After the 16th the delay, was for a period of three days only. It can hardly be described as delay though one wishes there was no room even for that little complaint. We are of the view that there has not been any unaccountable or unreasonable delay in the disposal of the representation by the detaining authority."*

(Emphasis added by Court)

40. In **Aslam Ahmed Zahire Ahmed Shaik v. Union of India and Others,**

(1989) 3 SCC 277, the Hon'ble Apex Court made the following observations,

> *"5. This Court in Sk. Abdul Karim and Others v. State of West Bengal, [1969] 1 SCC 433 held: (SCC p. 439, para 8)*
>
> > *"The right of representation under Article 22(5) is a valuable constitutional right and is not a mere formality."*
>
> 6. *This view was reiterated in Rashid SK. v. State of West Bengal, [(1973) 3 SCC 476 : 1973 SCC (Cri) 376] while dealing with the constitutional requirement of expeditious consideration of the petitioner's representation by the Government as spelt out from Article 22(5) of the Constitution observing thus: (SCC p. 478, para 4)*
>
> > *"**The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty-the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.**"*
>
> *7.* ***It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and circumstances of each case****. The expression 'reasonable expedition' is explained in Sabir Ahmed v. Union of India, [(1980) 3 SCC 295: 1980 SCC (Cri) 675] as follows:*
>
> > *"What is 'reasonable expedition' is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But is certainly does not cover the delay due to negligence, callous inaction*

avoidable red-tapism and unduly protracted procrastination."

8. See also Vijay Kumar v. State of J&K [(1982) 2 SCC 43 : 1982 SCC (Cri) 348] and Raisuddin v. State of U.P. [(1983) 4 SCC 537 : 1984 SCC (Cri) 16] .

9. Thus ***when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.****"***

(Emphasis added by Court)

41. In the instant case, admittedly the petitioner was detained on 02.07.2025. From a perusal of the pleadings on record, it emerges that the detention order, along with other connected documents, were forwarded by the District Magistrate, Mathura to the State Government on the same day, i.e., on 02.07.2025 and which were received by the State Government on 03.07.2025. Thereafter, the State Government approved the same on 11.07.2025 and the decision was communicated to the petitioner on 12.07.2025. Further, a copy of the detention order, grounds of detention and other related documents had also been forwarded to the Central Government within the statutory time period.

42. As per the mandate of Section 3(4) of the Act, the detention order cannot remain in force unless the same is approved by the concerned State Government within a period of 12 days from the date of passing of the detention order. Section 3(5) states that once the detention order is approved by the State Government, the same has to be reported to the Central Government within 7 days along with the grounds of detention. The detention order dated 02.07.2025 was approved by the State Government on 12.07.2025 and same was also forwarded to the Central Government. Thus, the mandate of Section 3(4) and 3(5) stood complied in the present case.

43. The representation against the detention was submitted by the petitioner on 07.07.2025 to jail authorities, Mathura. The Superintendent, District Jail forwarded the representation to the DM Mathura on the same day. Thereafter, the representation was rejected by the District Magistrate on 11.07.2025 and the decision was communicated to the detenue petitioner on the same day. The District Magistrate had forwarded the representation, along with his comments to the State and Central Government.

44. The representation dated 07.07.2025 was received by the concerned section of the State Government on 14.07.2025 along with the letter and comments of the District Magistrate dated 11.07.2025. The copy of the representation was sent to both the Central Government and Advisory Board on 15.07.2025. Thereafter, the representation was examined by the Under Secretary, Home Department, Uttar Pradesh on 16.07.2025 and on the same day the representation was also considered by the Joint Secretary and subsequently Special Secretary, Home Department, Uttar Pradesh. Subsequently, on 17.07.2025 the representation was examined by the Secretary, Home Department, Uttar Pradesh and on 18.07.2025, the representation was examined by the Principal Secretary, Home Department, Uttar Pradesh. 19.07.2020 and 20.07.2020 were holidays and thereafter, the representation was sent to the higher authorities who, after considering all the relevant documents, approved the detention order on 23.07.2025. On the same day, decision of the State Government was communicated to the petitioners. Thus, a total of 16 days were taken by the State Government in deciding the representation of the petitioners, on which the petitioner also has no dispute.

45. On the part of the Central Government, the representation dated 07.07.2025, along with the para-wise comments of the detaining authority dated 11.07.2025, were received by the concerned Ministry of the Central Government on 14.07.2025 and reached the concerned Section of the Ministry on 15.07.2025. Thereafter, the Central Government waited for the copy of the report of the State Government, which was received on 22.07.2025 after the State Government had considered and approved the detention. The Central Government wanted to peruse the comments of the State Government before deciding the representation and the State Government communicated its own satisfaction after considering the material available on record. The learned counsel also produced certain email communications dated 18.07.2025 and 22.07.2025 to establish that the Central Government was acting with diligence and had requested the State Government for the record of the case.

46. Thereafter, the representation dated 07.07.2025 as well as the report sent by the State Government containing the grounds of detention, comments and related documents, were examined at the section level on 23.07.2025 and forwarded to the Under Secretary on 24.07.2025. On the same day, the Under Secretary forwarded the same to the Deputy Secretary, along with her comments. Thereafter, the same was forwarded to Joint Secretary on 25.07.2025 and to the Union Home Secretary on 26.07.2025. Since 27.07.2025 was Sunday, the same was considered and rejected by the Union Home Secretary on 28.07.2025 and sent back to the Joint Secretary. The file reached the concerned section on 30.07.2025 and was communicated to the detenue petitioner on 30.07.2025. Therefore, a total of 23 days were taken in transmitting the representation, deliberating, deciding and communicating the decision.

47. Thus, within a span of 23 days, all three authorities, whom the petitioner has claimed are bound by a duty to expeditiously decide the representation of the detenue, had decided the representation of the petitioner. The respondents have contended that the representation was decided by the concerned authorities within the shortest possible time. However, we deem it appropriate to mention that it is not merely the duration or number of days which have to be looked upon, rather a holistic view has to be taken to determine if there was any indifference, slackness or callous attitude on the part of the authority concerned. Further, delay in itself is not fatal and it is only where the delay is unexplained or depicts a callous and indifferent approach on the part of the authorities that can an adverse view be taken.

48. From a perusal of the above, nothing is on record to demonstrate deliberate or fatal delay on the part of either the State Government or the Central Government.

49. The detention order dated 02.07.2025 had informed the petitioner detenue that he has a right to prefer a representation against the detention order before the District Magistrate, State Government as well as Central Government. The detention order further specified that if the representation is preferred after the confirmation of the detention order by the State Government or after the statutorily mandated period of 12 days for confirming the detention, then no representation would lie before the District Magistrate and only the State Government or the Central Government would be empowered to decide the representation. The detenue was also informed about the right of being heard by the Advisory Board. Thereafter, since the representation dated 07.07.2025 was preferred prior to the confirmation of the detention by the State Government, thus, the District Magistrate, vide its

order dated 11.07.2025, decided the same and communicated his decision to the petitioner detenue as well as the State and the Central Government.

50. The Advisory Board, vide its letter dated 05.08.2025, had informed the State Government that the petitioner's case was fixed for hearing on 08.08.2025 and the petitioner was free to attend the hearing along with his next friend (non-advocate), and the same was communicated to the petitioner through district authorities on 05.08.2025. The petitioner appeared before the Advisory Board on 08.08.2025 and after hearing the petitioner, the Advisory Board submitted a report affirming the presence of sufficient cause for the detention of the petitioner and the said report was communicated to the State Government vide letter dated 12.08.2025. The report of the Advisory Board reached the concerned section of the State Government on 13.08.2025 and on 18.08.2025, the State Government affirmed the detention of the petitioner for a period of 12 months from the date of detention under Section 12 of the Act and the same was communicated to the petitioner detenue on 19.08.2025.

51. The State Government, on its part, has explained the procedure followed in deciding the representation and the time taken by each concerned official. The State Government affirmed the detention order dated 02.07.2025 on 12.07.2025 and thereafter, decided the representation of the detenue petitioner on 23.07.2025 after considering all the material on record including the comments of the District Magistrate dated 11.07.2025. The Central Government, on its part, decided the representation on 30.07.2025 after considering the detention order, grounds, comments of the District Magistrate as well as the State Government. The Central Government has furnished the details about the time taken by each concerned official and has also furnished records of emails and other communication to establish that while some time had been spent in obtaining the comments from the State Government, the same cannot be said to be indicative of lethargy, indifference or callous attitude on the part of the Central Government as it was dealing with the matter promptly and had requested for the comments immediately after receiving the representation.

52. In the case of **Kamarunnissa Etc. vs Union Of India And Ors, 1991 (1) SCC 128,** the Hon'ble Supreme Court, while holding that the time taken by the concerned authorities in obtaining the views or comments of the sponsoring authority cannot be said to be futile, made the following observations:

> *"7. The learned counsel for the petitioners raised several contentions including the contentions negatived by the High*

Court of Bombay. It was firstly contended that the detenus had made representations on 18th December, 1989 which were rejected by the communication dated 30th January, 1990 after an inordinate delay. The representations dated 18th December, 1989 were delivered to the Jail Authorities on 20th December, 1989. The Jail Authorities despatched them by registered post. 23rd, 24th and 25th of December, 1989 were non-working days. The representations were received by the COFEPOSA Unit on 28th December, 1989. On the very next day i.e 29th December, 1989 they were forwarded to the sponsoring authority for comments. 30th and 31st December, 1989 were non-working days. Similarly 6th and 7th January, 1990 were non-working days. The comments of the sponsoring authority were forwarded to the COFEPOSA Unit on 9th January, 1990. Thus it is obvious that the sponsoring authority could not have received the representations before 1st January, 1990. Between 1st January, 1990 and 8th January, 1990 there were two non-working days, namely, 6th and 7th January, 1990 and, therefore, the sponsoring authority can be said to have offered the comments within the four or five days available to it. It cannot, therefore, be said that the sponsoring authority was guilty of inordinate delay. The contention that the views of the sponsoring authority were totally unnecessary and the time taken by that authority could have been saved does not appeal to us because consulting the authority which initiated the proposal can never be said to be an unwarranted exercise. After the COFEPOSA Unit received the comments of the sponsoring authority it dealt with the representations and rejected them on 16th January, 1990. The comments were despatched on 9th January, 1990 and were received by the COFEPOSA Unit on 11th January, 1990. The file was promptly submitted to the Finance Minister on the 12th; 13th and 14th being non-working days, he took the decision to reject the representations on 16th January, 1990. The file was received back in the COFEPOSA Unit on 17th January, 1990 and the Memo of rejection was despatched by the post on 18th January, 1990. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with-the representations of the detenus. Our attention was drawn to the case law in this behalf

> *but we do not consider it necessary to refer to the same as the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is apparent from the facts narrated above. We, th*erefore, *do not find any merit in this submission."*

53. The view that calling for the views of the sponsoring authority cannot be said to be intentional delay on the part of the deciding authority has been further affirmed by the Hon'ble Supreme Court in ***Union of India v. Yumnam Anand (2007) 10 SCC 190***. Similarly, in ***Union of India v. Laishram Lincola (2008) 5 SCC 490***, the Hon'ble Supreme Court held that the explanation pertaining to the time taken by the Central Government in obtaining the comments of the State Government must be considered while determining whether the delay in deciding the representation of the detenue was fatal or not.

54. Certainly, no hard and fast rule exists for determining the timeline within which the representation is supposed to be determined by the concerned authority and it has to be decided on the basis of the facts of each individual case. The affidavits filed by the respondent authorities demonstrate their conduct in dealing with the representation of the detenue petitioner and it cannot be said that they acted with indifference. The petitioner was also provided an opportunity to present his case before the Advisory Board which he duly exercised. Thus, the argument pertaining to the delay in deciding the representation is rejected.

Regarding detenue already being in custody and apprehension of grant of bail

55. Another contention raised by the learned counsel for the petitioner is that the since the petitioner was already in jail at the time of passing of the detention order, there was no occasion for the detaining authority to have passed the detention order dated 02.07.2025. On the other hand, the learned counsel for the respondents has urged that the detaining authority had recorded its satisfaction to the effect that the petitioner detenue is likely to engage in activities prejudicial to public order upon being released on bail, as is evident from his previous conduct, and thus, the authorities passed the detention order dated 02.07.2025 in order to prevent the detenue from disturbing the public order and societal peace.

56. After hearing arguments of both the parties in this regard, it is appropriate to mention here that there is no dispute regarding regarding the fact that the tila had collapsed due to the unauthorized construction and digging activities carried out by the petitioner and others. As a result, the shopkeepers shut down their shops and the local residents protested against such illegal acts which resulted in the death of three persons, including children, and the collapse of several houses. The incident was also broadcast on news channels and published in newspapers. Subsequently, an FIR was lodged under Section 105 of the Bharatiya Nyaya Sanhita, 2023 (B.N.S., 2023) and the petitioner was arrested. The bail application had been filed by the petitioner detenue on 30.06.2025 and the detention order was passed on 02.07.2025.

57. Now the question that arises for our consideration is whether a detention order can be passed against an accused who is already in jail and in anticipation of his release on bail and for the purpose of preventing him from committing acts prejudicial to public order. We find the answer to be in the affirmative. Reasons for this is clear from the plain reading of Section 3 of the Act, 1980 which stipulates that the government can pass an order of preventive detention for the purpose of preventing an accused persons from committing acts prejudicial to public order. Thus, where the detaining authority is of the opinion that a person, who is in jail, is likely to be released and upon being released, there is a reasonable apprehension of such person indulging in acts prejudicial to public order, then the detaining authority may pass a detention order under Section 3 of the Act, 1980.

58. Therefore, where the detaining authority is of the opinion that the circumstances of a particular case necessitate the passing of a detention order despite the presence of the accused in jail, then in such a scenario, the detaining authority, while recording its reasons and satisfaction for such compelling circumstances, may pass the detention order.

59. The Hon'ble Supreme Court, in the case of ***Kamarunnissa (supra)***, while dealing with the issue of whether a person who is already in jail can be detained under the preventive detention law on the basis of probability of him being released on bail, made the following observations after referring to a catena of judgments relating to the same issue:

> *"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 a 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 this behalf, such an order cannot 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 it before a higher court.*** *What this court stated in the case of Ramesh Yadav (supra) was that ordinarily a detention order should not be passed merely to preempt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand. resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore. find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the, detenus were in custody."*
>
> **(Emphasis supplied by Court)**

60. From a perusal of the detention order dated 02.07.2025, it is apparent that the detaining authority was conscious of the pending bail application of the petitioner detenue. After the bail application was filed by the petitioner on 30.06.2025, the Station House Officer of Govind Nagar Police Station, District Mathura made a representation to the Senior Superintendent of Police for requesting the District Magistrate for the detention of the petitioner under Section 3 of the Act and thereafter, on 02.07.2025, the detention order was passed by the District Magistrate.

61. Further, this is also not disputed by the learned counsel for the petitioner that the bail application dated 30.06.2025 had been withdrawn only after the passing of the detention order dated 02.07.2025. The detention order further records that the people of the affected area were apprehensive that the petitioner, upon being released on bail, will continue his illegal demolition activities. The criminal history of the petitioner was also relied upon by the detaining authority. Thus, we find this ground to be lacking merits in the backdrop of the facts of the instant case.

Regarding the alleged extraneous grounds pertaining to criminal

history

62. The last contention of the petitioners is that extraneous grounds, such as criminal history of the dentenue, were taken into consideration while passing the detention order dated 02.07.2025. Per contra, the learned counsel for the respondents have submitted that the previous criminal history of the detenue is a valid ground for arriving at the subjective satisfaction. The learned counsels for the respondents have vehemently stressed that all the relevant grounds had been specified in the detention order and the court is not required to substitute its own satisfaction in place of the subjective satisfaction of the detaining authority.

63. While passing an order of detention under the Act, 1980, the detaining authority has to record its satisfaction to the effect that the detention of the detenue is necessary in order to prevent him from acting in any manner prejudicial to the public order or any of the other grounds specified in Section 3. The previous conduct or criminal antecedents of the detenue can be considered in arriving at such subjective satisfaction.

64. FIRs pertaining to serious offenses such as murder, criminal intimidation and sexual offenses against children had been lodged against the petitioner dentue in the years 2018, 2019, 2020 and 2024. On 16.06.2025, another FIR had been lodged against the petitioner under Section 105 of the B.N.S., 2023. These facts were taken into consideration by the detaining authority while arriving at the subjective satisfaction that the detention of the petitioner was needed in order to prevent him from engaging in activities prejudicial to the public tranquility and social harmony. Further, the detaining authority was also conscious of the fact that a charge-sheet could not be filed in any of the cases filed lodged the petitioner as the witnesses and complainants did not come forward to support the allegation against him due to the fear of the petitioner. Facts pertaining to the criminal history of the petitioner which have found place in the detention order is a significant factor while assessing whether a person will contribute positively to the society after being released on bail or will he prejudice the momentum of society by engaging in activities prejudicial to public order. Thus, the detention order cannot be set aside solely because the detaining authority took into consideration the previous criminal cases lodged against the detenue. Hence, there is no substance in the arguments of the petitioner regarding this ground.

65. The Court is not required to delve into the subjective satisfaction of the detention authority and has to only consider whether relevant and material circumstances and grounds were considered by the detaining authority. The

detention order dated 02.07.2025 clearly specified the grounds on the basis of which the petitioner was detained. The detaining authority had considered the illegal and unauthorized excavation activities of the detenue which resulted in the demolition of several houses in a crowded area, claiming lives of 3 persons including children. Several houses had been affected due to the unauthorized drive of the petitioner. Evidently, people were forced to abandon their own homes and those who decided to stay had to witness tractors and heavy machineries clamping down on their homes. The fear, apprehension and panic of the general public has also been considered by the detaining authority.

66. The petitioner was provided a detailed description of the grounds considered by the authority while passing the detention order dated 02.07.2025. He was also informed about his right to prefer a representation before the concerned authorities and the right to appear before the Advisory Board. As such, we not find any infirmity in the detention order dated 02.07.2025 (wrongly indicated as 02.07.2024 in prayer clause of the writ petition.

67. Accordingly, the instant habeas corpus petition is **dismissed.**

68. Before parting with the case, we may also record that the operative portion of the judgment including maintainability was dictated in open Court. However, as voluminous pleadings had to be gone into including consideration of the detailed arguments as had been advanced by the learned counsels for the contesting parties for four days from 28.01.2026 to 30.01.2026 and thereafter, on 02.02.2026 (31.01.2026 and 01.02.2026 being holidays), consequently, the judgment itself became voluminous which took some time to dictate and upload. Some time was also taken as one of us was not available for four days at the station.

February 2, 2026
Pachhere/Reena/-

(Mrs. Babita Rani,J.) (Abdul Moin,J.)