2026:AHC:43774-DB

A.F.R.

Reserved on : 16.01.2026
Delivered on : 26.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 428 of 2025

Hasnen

.....Petitioner(s)

Versus

Union of India and 5 others

.....Respondent(s)

Counsel for Petitioner(s) : Sushil Kumar

Counsel for Respondent(s) : Manish Pandey, A.S.G.I., G.A.

Connected With

HABEAS CORPUS WRIT PETITION No. - 475 of 2025

Saiyyaj Ali

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s) : Sushil Kumar

Counsel for Respondent(s) : Manish Pandey, A.S.G.I., G.A.

Connected With

HABEAS CORPUS WRIT PETITION No. - 504 of 2025

Sikandar

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s) : Sushil Kumar
Counsel for Respondent(s) : A.S.G.I., G.A., Manish Pandey

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

Per : Hon'ble Chandra Dhari Singh, J.

1. Before this Court there are three habeas corpus petitions challenging preventive detention orders passed under the National Security Act, 1980, arising from an incident of alleged cattle slaughter in the town of Kalpi, District Jalaun committed, as the detaining authority found, on the first day of Chaitra Navratri, the very event of Eid. The detaining authority found that this act shattered public order, created inter-community tension across multiple localities, generated fear and terror among the general public, and carried within it the very real risk of communal violence. The petitioners urge that their detention is illegal, that the grounds are insufficient, and that the matter is at best one of law and order, not public order. The State urges that every constitutional and statutory safeguard has been complied with and that the detention was a necessary measure to preserve

communal harmony in the area. It is these competing contentions that this Court is called upon to adjudicate.

INTRODUCTION

2. Personal liberty is the most elemental of freedoms, the one from which all others draw breath. Our Constitution, in its profound wisdom, protects it fiercely. Yet the same Constitution, with equal wisdom, acknowledges that there are moments when the safety of the community demands that one person's liberty yield to the larger imperative of preserving the peace in which all others live their lives. Preventive detention is that solemn exception, drastic, exceptional, and never to be ordinary. It is a power the courts have always viewed with searching scrutiny, for when the State detains without trial, without proof, and without the presumption of innocence, it must be held to the strictest account. The constitutional safeguards surrounding preventive detention are not technicalities to be observed in form alone, they are the thin but firm line between a constitutional democracy and arbitrary executive power. This Court, as a sentinel of personal liberty, approaches every habeas corpus petition with that awareness squarely in mind.

3. Yet liberty, however precious, does not exist in a vacuum. A nation as ancient and as diverse as ours carries within it the constant responsibility of tending to the fragile bonds of communal co-existence. When an act deliberate in its commission, precise in its timing, strikes at the deepest religious sentiments of a community at its most sacred moment, it carries within it the potential to fracture those bonds with swift and devastating effect. The law of preventive detention, when invoked on proper material and in strict accordance with constitutional

safeguards, serves not merely an administrative purpose but a deeper social one, the preservation of that even tempo of life that every citizen is entitled to live, undisturbed by those who would exploit communal sensitivities to foment disorder. It is against this backdrop that this Court proceeds to examine the legality of the impugned detention orders.

FACTUAL MATRIX

4. The matter has arisen out of the facts as detailed hereunder:

(i) On 31.03.2025, an FIR was lodged at Police Station Kotwali Kalpi, District Jalaun, registered as Case Crime No. 68 of 2025, under Sections 3/5/8 of the U.P. Prevention of Cow Slaughter Act, 1955, Section 11 of the Prevention of Cruelty to Animals Act, 1960, and Sections 4/25 of the Arms Act, 1959, against eight accused persons, including the present petitioners/detenues Sikandar, Saiyyaj Ali, and Hasnen, in relation to the alleged illegal slaughter of cattle within the jurisdiction of the said police station.

(ii) As per the FIR narrative, the police personnel were on patrolling duty on 30.03.2025. It is alleged that upon receiving information regarding illegal slaughter by 7–8 persons between fields/shrubs, the police party reached the spot and allegedly saw one person filling meat in a plastic bag and others allegedly engaged in slaughtering animals. It is further alleged that a raid was conducted and petitioner Sikandar was apprehended, and recovery of a knife and approximately 2-3 quintals of beef/cattle meat was

made from Sikandar, and it is further alleged that he disclosed the names of Saiyyaj Ali and Hasnen.

(iii) It is the petitioners' case that the prosecution version is founded primarily on the statement of the informant and other witnesses, who, as pleaded, are police personnel, and that the investigation materials collected (including statements and other documents) formed part of the record placed before the detaining authority.

(iv) The investigation in Case Crime No. 68 of 2025 culminated in a charge-sheet dated 24.05.2025. Sikandar was remanded to judicial custody on 31.03.2025, whereas Husnen surrendered before the Chief Judicial Magistrate, Jalaun at Orai on 11.04.2025, and Saiyyaj Ali was remanded to judicial custody on 04.04.2025.

(v) Saiyyaj was directed to be released on bail vide order dated 21.04.2025 in Criminal Misc. Bail Application No. 300 of 2025 (Saiyyaj Ali v. State of U.P.). Hasnen was directed to be released on bail vide order dated 25.04.2025 passed in Criminal Misc. Bail Application No. 313 of 2025 (Hasnen v. State of U.P.). In the case of Sikandar, it is stated that his bail application was pending in Criminal Misc. Bail Application No. 16469 of 2025.

(vi) In relation to Sikandar, the Circle Officer, Kalpi, District Jalaun submitted a report dated 23.04.2025 to the Superintendent of Police, Jalaun, and on the same

date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) of the National Security Act, 1980, passed the detention order dated 28.04.2025, which is under challenge in the present petition filed by Sikandar.

(vii) In relation to Saiyyaj Ali, the Circle Officer, Kalpi, District Jalaun submitted a report dated 26.04.2025 to the Superintendent of Police, Jalaun, and on the same date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) NSA, passed the detention order dated 28.04.2025, which is under challenge in the petition filed by Saiyyaj Ali.

(viii) In relation to Husnen, the Circle Officer, Kalpi, District Jalaun submitted a report dated 26.04.2025 to the Superintendent of Police, Jalaun, and on the same date the Superintendent of Police forwarded his report to the District Magistrate, Jalaun, whereafter the District Magistrate, in exercise of powers under Section 3(2) NSA, passed the detention order dated 28.04.2025, which is under challenge in the petition filed by Husnen.

(ix) Prior to the passing of the detention order, a communication dated 03.04.2025 was issued from the confidential section to the Superintendent of Police,

Jalaun, indicating that if the petitioners were released on bail, they were likely to repeat the alleged offence.

(x) The detention orders dated 25.04.2025 and 28.04.2025 were passed by the District Magistrate, Jalaun on the basis of reports/inputs of the Station House Officer, Circle Officer, Additional Superintendent of Police, and Superintendent of Police, District Jalaun.

(xi) A copy of the detention order, the grounds of detention, and all other connected documents, as received from the District Magistrate, Jalaun, were also forwarded to the Central Government vide letter dated 05.05.2025.

(xii) Under Section 10 of the NSA, the State Government placed before the Advisory Board the detention order, grounds on which the order has been made and ancillary material on 05.05.2025. The petitioners submitted representations/replies dated 07.05.2025/08.05.2025 seeking revocation of the detention orders under the NSA. The same were examined and finally rejected by the State Government on 20.05.2025/21.05.2025 and communicated on the next day. Copies of the representations were also placed before the Advisory Board.

(xiii) The U.P. Advisory Board, Lucknow, vide letter dated 26.05.2025, informed the State Government that the case of the petitioner would be taken up for

hearing on 28.05.2025. The Board further directed that the petitioner be informed that, if he so desired, he could appear before the U.P. Advisory Board along with a "next friend" (non-advocate) and, upon request, be permitted to take such next friend with him. This intimation was accordingly communicated to the petitioner through the district authorities by the State Government vide letter dated 26.05.2025. The petitioner appeared before the U.P. Advisory Board on the date fixed. The U.P. Advisory Board heard the petitioner in person as well as the Government officials, and thereafter forwarded its report along with its opinion that there existed sufficient cause for the preventive detention of the petitioner under NSA.

(xiv) Acting on the said report in exercise of its powers under Section 13 of the Act, the State Government vide order dated 12.06.2025 confirmed the detention order and directed continuance of the detention for a period of one year from the date of detention.

(xv) Aggrieved by the detention orders dated 25.04.2025 and 28.04.2025, the petitioners have approached this Hon'ble Court under Article 226 seeking, *inter alia*, quashing of the impugned detention orders and their release.

SUBMISSIONS

Petitioners' Submissions

5. The Petitioners' case, in brief, is that the instant habeas corpus petitions under Article 226 of the Constitution of India

have been filed to challenge the detention orders dated 25.04.2025 and 28.04.2025 passed by the District Magistrate, Jalaun under Section 3(2) of the National Security Act, 1980, whereby the petitioners have been directed to be detained for a period of one year. It is submitted that the petitioners have been in illegal custody in pursuance of the said order and seek issuance of a writ of habeas corpus directing that they be set at liberty, along with quashing of the impugned detention orders.

6. It is stated that an FIR dated 31.03.2025 was lodged at Police Station Kotwali Kalpi, District Jalaun, registered as Case Crime No. 68 of 2025 under Sections 3/5/8 of the Prevention of Cow Slaughter Act, Section 11 of the Prevention of Animal Cruelty Act, 1960 and Sections 4/25 of the Arms Act against the petitioner and seven other co-accused.

7. Learned counsel for the petitioners refers to the contents of the FIR and submits that they have been falsely implicated in the said case. It is further submitted that the prosecution version is founded upon the statements of the informant and other witnesses, who, as pleaded, are police personnel.

8. In the case of Sikander, it is pleaded that he was sent to jail on 31.03.2025 in the aforementioned case. It is further submitted that Saiyyaj Ali was neither apprehended from the spot nor anything had been recovered from his possession and had been imprisoned since 04.04.2025; he was directed to be released on bail vide order dated 21.04.2025 in Criminal Misc. Bail Application No. 300 of 2025 (Saiyyaj Ali v. State of U.P.). In the case of Hasnen, it is stated that he surrendered before the Chief Judicial Magistrate, Jalaun at Orai on 11.04.2025 and

has remained in jail since then in connection with the aforesaid case; he was directed to be released on bail vide order dated 25.04.2025 passed in Criminal Misc. Bail Application No. 313 of 2025 (Hasnen v. State of U.P.).

9. It has further been contended that the investigation in Case Crime No. 68 of 2025 has been completed and a chargesheet has been filed on 24.05.2025. It is also pleaded that the petitioners have no other criminal history apart from the aforesaid case.

10. So far as the detention proceedings are concerned, it is stated that the Station House Officer submitted a report to the Superintendent of Police regarding detention of the petitioner under the National Security Act. It is further stated that the Circle Officer and the Additional Superintendent of Police also submitted reports to the Superintendent of Police, who then forwarded a Report to the District Magistrate for passing an order under Section 3(2) of the Act, pursuant to which the District Magistrate passed the impugned detention order(s) dated 25.04.2025 and 28.04.2025.

11. On the basis of the above pleadings, learned counsel for the Petitioners submit that the detention orders are bad in the eye of law. It is further pleaded that the impugned order(s) has been passed without due application of mind. Learned counsel for the Petitioners also alleges violation of the principles of natural justice and infringement of Articles 14 and 19 of the Constitution of India.

12. Accordingly, it is prayed that this Hon’ble Court may be pleased to issue a writ of habeas corpus directing the

respondents to set the petitioner at liberty and to quash the detention order(s) dated 25.04.2025 and 28.04.2025 passed by the District Magistrate, Jalaun under Section 3(2) of the National Security Act, 1980.

Respondents' Submissions

13. Learned counsels for the respondents/State submit that an FIR dated 31.03.2025 was registered as Case Crime No. 68 of 2025 at Police Station Kotwali Kalpi, District Jalaun, under Sections 3/5/8 of the U.P. Cow Slaughter Act, 1955, Section 11 of the Prevention of Cruelty to Animals Act, 1960, and Sections 4/25 of the Arms Act, 1959, against eight accused persons including the petitioners/detenues Sikandar, Saiyyaj Ali and Hasnen. It is stated that Sikandar is in judicial custody since 31.03.2025, Saiyyaj Ali since 04.04.2025, and Hasnen since 11.04.2025 in the aforesaid case. After investigation, the charge-sheet has been submitted against the accused persons including the petitioners/detenues.

14. It has been submitted that a substantial quantity of beef (about three quintals) was recovered, and cattle were found tied as well as bones/skin/weapons were also recovered. One detenue was apprehended at the spot while the others fled. The incident, having regard to its extent and local impact, caused fear and tension in and around the area and disturbed communal harmony, thereby impacting public order, not merely law and order.

15. The detaining authority/District Magistrate, Jalaun passed separate detention orders under Section 3 (2) of the National Security Act, 1980 against the petitioners/detenues. Learned

counsels for the Respondents stated that the said detention orders were approved by the State Government on 03.05.2025 within the period prescribed under Section 3(4) of the Act, 1980.

16. It is submitted that the matter was placed before the U.P. Advisory Board, Lucknow. The detenues were informed to appear before the Advisory Board along with a next friend. The detenues appeared in person and were heard on 28.05.2025. The Advisory Board thereafter opined that sufficient cause exists for preventive detention of the petitioners under the National Security Act, 1980. The State Government received the Advisory Board's report/opinion on 05.06.2025 within the time contemplated under Section 11(1) of the Act, 1980, and upon independent reconsideration of the entire material, the State Government confirmed the detention orders for twelve months from 25.04.2025 under Sections 12 and 13 of the National Security Act, 1980.

17. It is stated that the grounds of detention disclose the incident and the activities attributed to each detenue separately. The detaining authority has recorded satisfaction, on the basis of cogent material, that (i) the detenues were attempting to secure bail and there was a real possibility of their release, and (ii) upon release, they were likely to indulge in activities prejudicial to the maintenance of public order.

18. It is submitted that the entire procedure applicable to preventive detention has been duly complied with. The detention orders, grounds of detention and relied upon materials were duly served. The detenues submitted representations dated 08.05.2025, which were processed

within reasonable time as reflected in the respective counter affidavits. It is stated that the representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar was rejected on 21.05.2025, followed by communication to the detenues.

19. In view of the foregoing, it was submitted that the detention orders are based on relevant material and contain specific grounds. There is no material indicating *mala fides* or vagueness. The subjective satisfaction recorded by the detaining authority, being founded on cogent material, is not open to interference in habeas jurisdiction except on well-settled grounds, which are not made out herein.

20. Thus, it was prayed by learned counsels appearing for the Respondents that in view of the aforesaid facts and the statutory compliance at every stage, and considering the Advisory Board's opinion and the material demonstrating disturbance of public order, the State respectfully submits that the present habeas corpus petitions are devoid of merit and liable to be dismissed.

21. During the course of the submissions, the learned counsels appearing for the Respondents placed reliance on plethora of judgments including:

Pesala Nookaraju v. Government of Andhra Pradesh[1]
Kartik Chandra Guha v. State of West Bengal [2]
Alijan Mian v. District Magistrate, Dhanbad[3]
Yofendra Muraari v. State of U.P.[4]
N. Meera Rani v. Government of Tamil Nadu[5]

1*[(2023) 14 SCC 641]*
2*[(1975) 3 SCC 490]*
3*(1983) 4 SCC 301*
4*AIR 1988 SC 1835*
5*AIR 1989 SC 2027*

Arun Ghosh v. State of West Bengal[6]
Raisuddin alias Babu Mamchi[7]
Ashok Kumar v. Delhi Administration[8]
Dr. Ram Manohar Lohia v. State of Bihar[9]
Hetchin Haokip v. State of Manipur[10]
A. Maimoona v. State of Tamil Nadu[11]

22. Heard Mr. Sunil Kumar, learned counsel for the petitioners, Mr. Manish Pandey, learned counsel appearing on behalf of respondent no. 2, Mr. S.K. Ojha, learned Additional Government Advocate appearing on behalf of the State of U.P. and perused the material on record.

PREVENTIVE DETENTION & JUDICIAL REVIEW

23. Prior to adverting to the questions for consideration, and before examining the legality of the impugned detention orders, this Court deems it apposite to recapitulate the settled principles governing preventive detention, namely, the object and rationale for which such extraordinary power may be invoked, the essential requirements that must inform and sustain a valid detention order, and the limited but strict contours of judicial review in habeas corpus over such executive satisfaction.

Concept of Preventive Detention

24. The essential defining feature of preventive detention is that the restraint is not imposed to punish a person for what he has already done, but to prevent him from doing so

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6 *(1970) 1 SCC 98*
7 *(1983) 4 SCC 537*
8 *(1982) 2 SCC 403*
9 *AIR 1966 SC 740*
10 *(2018) 9 SCC 562*
11 *SLP (Crl.) No. 4441 of 2005*

in future. The foundation of such detention is the executive's satisfaction, on the basis of relevant material, that there exists a reasonable probability of the detenu acting in a manner akin to his past conduct, and that his detention is necessary to forestall such anticipated conduct. In cases of preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu. Preventive detention is not to punish an individual for any wrong done by him, but by curtailing his liberty, with a view to preventing him from committing certain injurious activities in future. Preventive detention is thus preventive, and not punitive.

25. Proceedings in a court of law and an order of detention under the 1980 Act operate in distinct fields: the former is punitive, while the latter is preventive. In prosecution, punishment follows only upon proof of guilt, tested against the standard of proof beyond reasonable doubt; in preventive detention, the restraint is imposed with a view to preventing the commission of acts of the nature contemplated by the statute authorising such detention.

26. Preventive detention is thus qualitatively different from punitive detention. It is a precautionary power exercised in reasonable anticipation, and may or may not be linked to a specific offence. It is neither a substitute for, nor a parallel to, criminal prosecution, and does not overlap with it merely because it may draw upon certain facts that could also furnish the basis for prosecution. A preventive detention order may be made prior to, or during, prosecution; it may be made with or without prosecution; and it may even be made in anticipation of, or after, discharge or acquittal. The

pendency of prosecution is no impediment to the making of a preventive detention order, just as a detention order does not operate as a bar to prosecution.

27. Article 22(1) and (2) of the Constitution guarantee protection to a person against arbitrary arrest, except under a warrant issued by a court of law, and are vital and fundamental for safeguarding personal liberty. Nonetheless, the protection so guaranteed is subject to clause (3) of Article 22 which operates as an exception to clauses (1) and (2) and ordains that nothing therein shall apply to, inter alia, any person who is arrested or detained under any law providing for preventive detention. The purpose of preventive detention, as delineated in ***Haradhan Saha v. State of W.B.***[12], is to prevent the greater evil of elements imperilling the security and safety of a State, and the welfare of the Nation. Preventive detention, though a draconian and dreaded measure, is permitted by the Constitution itself however with the rider of safeguards as inherent in the text of the said article itself, and with the riders carved out by the constitutional courts through judicial decisions which have stood the test of time.

28. It is well settled that the executive may resort to preventive detention on the basis of reasonable suspicion and as a precautionary measure, to avert anticipated acts by the proposed detenu which are prejudicial to the specified statutory objects under a validly enacted law. Since a preventive detention order entails a serious curtailment of personal liberty on suspicion, is preventive rather than punitive in character, and since the subjective

12*(1975) 3 SCC 198*

satisfaction of the detaining authority, founded on the material before it, is not ordinarily amenable to judicial scrutiny on merits, constitutional courts do not sit in appeal over whether such satisfaction has been correctly reached on each factual aspect or whether the detention is justified on a reappreciation of facts. The scope for granting relief is therefore necessarily confined. Precisely for this reason, it is imperative that such an extraordinary and drastic power is invoked only in appropriate cases and exercised with due responsibility, rationality, and reasonableness.

29. At the same time, having regard to the grave consequence of deprivation of liberty under a preventive detention order, often enforced without affording the detenu an opportunity to present his case beforehand, constitutional courts, as sentinel on the *qui vive*, have consistently intervened to set aside detention orders whenever they are found to suffer from any legally recognized infirmity within the limited ambit of judicial review.

Writ of Habeas Corpus

30. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas Corpus" literally means "have the body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of

such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure.

31. In Halsbury's Laws of England, it is stated as under:

> *"The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiae. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."*

32. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarised thus:

> "*The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and*

> *detention to do, submit to, and receive whatsoever the court or Judge awarding the writ shall consider in that behalf." "Habeas corpus" literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence."*

33. In England, the jurisdiction to grant a writ existed in Common law, but has been recognised and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. Unlike certiorari or mandamus, a writ of habeas corpus is as of right to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

34. It is the duty of the Writ Courts to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the detaining person and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to "have the body" of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus,

the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ be addressed to any person whatever an official or a private individual who has another in his custody.

35. A writ of habeas corpus is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides: "21. Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law."

Scheme & Relevant Provisions under the National Security Act, 1980

36. The relevant provisions of the National Security Act, 1980 ("NSA") are set out in the following paragraphs, so as to indicate both the purpose and scheme of preventive

detention under the statute, and the statutory safeguards that condition the exercise of such extraordinary power. The Long Title and Statement of Objects and Reasons show that the Parliament conceived the NSA as an exceptional measure to address grave situations affecting defence, security, public order, and essential supplies/services, while simultaneously embedding institutional checks through Governmental scrutiny and Advisory Board oversight. The Long Title & Statement of Objects & Reasons of the National Security Act, 1980 is extracted hereunder:

> *"An Act to provide for preventive detention in certain cases and for matters connected therewith*
> *Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows:—*
> *Statement of Objects and Reasons.—In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom.*
> *2. Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. The National Security Ordinance, 1980, was, therefore, promulgated by the President on September 22, 1980.*
> *3. Subject to a modification, the Bill seeks to replace the aforesaid Ordinance. The modification relates to the composition of Advisory Boards, and is for providing that the Chairman of an Advisory Board shall be a person who is, or has been, a Judge of a*

High Court and the other members of the Advisory Board may be persons who are, or have been, or are qualified to be appointed as, Judges of a High Court."

37. Section 3 is the substantive source of the NSA's preventive detention power. It authorises the Central/State Government to order detention on specified grounds, and under Section 3(2) specifically, where detention is considered necessary to prevent a person from acting prejudicially to the security of the State, the maintenance of public order, or the maintenance of supplies and services essential to the community. The State Government may further delegate this power to a District Magistrate/Commissioner of Police for limited periods under Section 3(3). Where an officer so empowered makes a detention order, Section 3(4) mandates prompt reporting to the State Government and makes the order short-lived unless approved within the prescribed time; Section 3(5) thereafter requires reporting to the Central Government within the stipulated period. Section 3 is extracted hereunder for reference:

"3. Power to make orders detaining certain persons.—
(1) The Central Government or the State Government may,—
(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, of the security of India, or
(b) if satisfied with respect of any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,
it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner

prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

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

(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 an

order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "fifteen 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."

38. Section 5A embodies the doctrine of severability of grounds. Where a detention order under Section 3 is made on two or more grounds, the law deems the order to have been made separately on each ground, so that the order does not automatically fail merely because one ground is vague, non-existent, irrelevant, not proximate, or otherwise invalid. The provision thus prevents the detention order from being struck down solely because one among multiple grounds is defective, provided the remaining ground(s) can independently sustain the requisite satisfaction. The said provision is extracted hereunder:

"5-A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—
(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—
(i) vague,
(ii) non-existent,
(iii) not relevant,
(iv) not connected or not proximately connected with such person, or
(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;
(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

39. Section 8 operationalises the constitutional safeguard under Article 22(5) by requiring that, when a person is detained, the detaining authority must communicate the grounds of detention to the detenu as soon as may be, ordinarily within five days (and in exceptional circumstances, within the extended period specified in the statute), and must afford the detenu the earliest opportunity to make a representation against the order to the appropriate Government. Section 8(2) preserves a limited privilege permitting non-disclosure of facts whose disclosure is considered against public interest, while keeping the obligation of meaningful disclosure intact to enable an effective representation. The said provision is extracted hereunder:

"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 ten 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."

40. Section 10 establishes the mandatory institutional check of Advisory Board scrutiny. It requires the appropriate Government, in every case of detention under the NSA (save as otherwise expressly provided), to place before the Advisory Board within the prescribed time from the date of detention the grounds of detention, the representation (if any), and where the order is made by an empowered officer like a District Magistrate, the officer's report under Section 3(4). This ensures that detention does not remain solely within the executive's unilateral assessment and is subjected to an independent statutory review mechanism. The said provision is extracted hereunder:

> *"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.*

41. Section 11 governs the Advisory Board's procedure and timelines. The Board must consider the materials placed before it, may call for further information, and must submit its report to the appropriate Government within the prescribed period from the date of detention. Importantly, if the detenu desires to be heard, or if the Board considers it essential, the detenu must be heard in person. The report must specify the Board's opinion on whether there is sufficient cause for detention; proceedings and most parts of the report are confidential, and the detenu has no

entitlement to appear through a legal practitioner in matters connected with the Board. The said provision is extracted hereunder:

> *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.*

42. Section 12 sets out the consequence of the Advisory Board's opinion. If the Board reports that there is sufficient cause for detention, the appropriate Government may confirm the detention order and continue detention for such period as it thinks fit (subject to the statutory maximum). Conversely, if the Board reports that there is no sufficient cause, the Government is under a mandatory duty to revoke the detention order and cause the detenu to be released forthwith. Section 12 thus makes the Advisory Board's "no

sufficient cause" opinion binding in its operative effect. The said provision is extracted hereunder:

> *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."*

43. Section 13 imposes a statutory ceiling by providing that the maximum period for which a person may be detained pursuant to a detention order confirmed under Section 12 is twelve months from the date of detention. The proviso clarifies that this maximum does not curtail the Government's power to revoke or modify the detention order earlier. Section 13 therefore simultaneously limits executive detention temporally while preserving the capacity for earlier release upon reconsideration or changed circumstances. The said provision is extracted hereunder:

> *"13. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 12 shall be twelve months from the date of detention:*
> *Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."*

Judicial Review of Preventive Detention

44. Preventive detention, though constitutionally recognised, remains an exceptional executive power which

directly trenches upon personal liberty and is therefore subject to strict constitutional and statutory control.

45. In the case of ***A.K. Roy v. Union of India***[13]***,*** the Hon'ble Supreme Court upheld the constitutionality of the NSA and held that a law relating to detention cannot be struck down on a general plea of interference with the liberties of the people if otherwise constitutional. It also simultaneously reaffirmed that a detention law cannot be invalidated on a general plea of interference with liberty if otherwise constitutionally compliant, and that the safeguards in Article 22(4) and 22(5) operate as mandatory checks irrespective of whether they are expressly incorporated in the statute.

46. Earlier, in ***Shalini Soni v. Union of India***[14] the Hon'ble Supreme Court explained that Article 22(5) has two inseparable facets, viz. communication of grounds and opportunity of representation, and that "grounds" must be self-sufficient and self-explanatory, comprising not merely inferential conclusions but the constituent factual material relied upon, including supply of documents referred to therein.

47. The doctrinal journey of preventive detention jurisprudence in this country began with ***A.K. Gopalan v. State of Madras***[15]***,*** the first case in post-independent India where the Fundamental Rights provisions of the Constitution came up for comprehensive consideration before the Hon'ble Supreme Court, decided by its full strength of six Judges within four months of India becoming a Republic. In

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13*(1982) 1 SCC 271*
14 *(1980) 4 SCC 544*,
15*(1950) SCC 228*

that case, detention ordered under the Preventive Detention Act, 1950 was challenged both on the vires of the enactment and on the validity of the detention order itself. The Court, in that foundational moment, adopted an approach of circumscribing Article 21 by a relatively literal interpretation, treating the fundamental rights articles as operating in distinct, watertight compartments. That early formalism, however, did not endure. The doctrinal evolution from ***A.K. Gopalan (supra)*** to the effects-based fundamental rights approach ushered in by ***R.C. Cooper v. Union of India***[16] marked a decisive shift, one that reinforced that preventive detention must survive scrutiny not only under Article 22 but also within the broader discipline of Articles 14, 19 and 21, with courts insisting on strict compliance with procedural safeguards and meaningful opportunity to represent. What began as a narrow, compartmentalised reading of liberty has thus matured into a holistic constitutional framework within which preventive detention must justify itself at every stage.

48. Within this settled framework, the Hon'ble Supreme Court has consistently maintained that although the detaining authority's "satisfaction" is subjective and the Court does not sit in appeal over the sufficiency of grounds, the satisfaction is not immune from judicial review.

49. As early as ***Shibban Lal Saksena v. State of U.P.***[17] and ***Rameshwar Shaw v. DM, Burdwan***[18]***,*** the Hon'ble Supreme Court recognised that detention is vulnerable where

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16 *(1970) 1 SCC 248*
17*(1953) 2 SCC 617*
18 *(1963) SCC OnLine SC 33*

grounds are irrelevant/foreign to the statute or so vague as to disable representation, and that where multiple grounds operate on the detaining authority's mind, the Court cannot speculate which ground weighed how much. In ***Sibban Lal (supra)***, it was held as under:

> *"8. The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of mala fides [State of Bombay v. Atma Ram Shridhar Vaidya, 1951 SCC 43] . A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself in its communication dated 13-3-1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under Section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the*

> *statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."*

50. In ***Khudiram Das v. State of W.B.***[19], the Hon'ble Supreme Court authoritatively delineated the limited but real area of review, i.e. non-application of mind, improper purpose, dictation, self-created fetters, wrong test/misconstruction, reliance on extraneous material, and lack of rationally probative material; thereby ensuring that "subjective satisfaction" is a jurisdictional condition which must exist in law.

51. The proposition that Preventive detention is not permissible when the ordinary law of the land can deal with the situation, is *per incuriam* paras 19 and 32 to 34 of the Constitution Bench in ***Haradhan Saha v. State of W.B.***[20]

52. In ***Rameshwar Shaw v. District Magistrate, Burdwan***[21], a Constitution Bench of the Hon'ble Supreme Court held as follows :

> *"7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the ground supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation, that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order of detention proceeds are*

19 *(1975) 2 SCC 81*
20 *(1975) 3 SCC 198*
21*(1963) SCC OnLine SC 33*

relevant and germane to the matters which fall to be considered under Section 3(1)(a), it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.

8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides, the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts."

53. The Hon'ble Supreme Court in ***Khudiram Das v. State of W.B.***[22], while examining a challenge to an order of detention passed under Section 3 of the Maintenance of Internal Security Act, 1971 by a District Magistrate, held as follows :

"8. Now it is clear on a plain reading of the language of sub-sections (1) and (2) of Section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner, as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of Section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It

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22 *(1975) 2 SCC 81*

does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in State of Madras v. V.G. Row [State of Madras v. V.G. Row, (1952) 1 SCC 410] that preventive detention is "largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in R. v. Halliday [R. v. Halliday, 1917 AC 260 (HL)] , namely, that 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'. This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The

Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a quasi-judicial power. …

9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. King Emperor v. Sibnath Banerjee [King Emperor v. Sibnath Banerjee, 1943 SCC OnLine FC 15 : AIR 1943 FC 75 : (1944) 6 FCR 1] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of "improper purpose", that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of

Police did in State of Bombay v. Gordhandas Bhanji [State of Bombay v. Gordhandas Bhanji, 1951 SCC 1088] and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour & National Service [Simms Motor Units Ltd. v. Minister of Labour & National Service, (1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded 'on materials which are of rationally probative value'. (Machindar Shivaji Mahar v. R. [Machindar Shivaji Mahar v. R., 1950 SCC OnLine FC 4 : AIR 1950 FC 129 : (1949-50) 11 FCR 827]) The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. (S. Pratap Singh v. State of Punjab [S. Pratap Singh v. State of Punjab, 1963 SCC OnLine SC 10 : AIR 1964 SC 72 : (1964) 4 SCR 733] .) If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

54. The Hon'ble Supreme Court has also placed the burden squarely on the detaining authority to justify detention as

"procedure established by law", emphasising strictness in liberty cases in ***Icchu Devi Choraria v. Union of India***[23].

55. In ***Sunil Fulchand Shah v. Union of India***[24], it was reiterated that given the limited safeguards available, statutory timelines and procedural requirements must be scrupulously complied with, and any default can render detention or continued detention illegal. Thus, modern preventive detention jurisprudence recognises that no detention order is insulated merely because it is facially valid; constitutional courts will interdict detention where the statutory purpose, material foundation, clarity of grounds, live link, and procedural timelines do not withstand judicial scrutiny. It was held as under:

> *"11. … The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words "may be detained" shall have to be interpreted."*

56. On a conspectus of the decisions noticed above, it emerges that in the early years of constitutional adjudication, a plea was often advanced on behalf of detaining authorities that once an order of detention, ostensibly valid on its face, was produced, the Court's

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23 *(1980) 4 SCC 531*
24 *(2000) 3 SCC 409*

enquiry should practically cease. The law, however, has decisively evolved. Constitutional courts do not treat preventive detention as insulated merely because the order is formally couched within statutory language. With the deepening of Article 21 jurisprudence and the reinforcement of Articles 14, 19 and 22, it is now settled that a preventive detention order, despite *prima facie* regularity, remains open to judicial scrutiny on well-recognised grounds, including non-application of mind, reliance on irrelevant or extraneous material, vagueness disabling representation, absence of a live and proximate link, colourable exercise of power, and breach of mandatory procedural safeguards. In matters of personal liberty, no executive order can claim an impermeable shield against constitutional review.

TEST FOR LEGALITY OF DETENTION ORDER

57. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, make it clear that the "subjective satisfaction" of the detaining authority is a jurisdictional foundation which must exist in law and must be demonstrable from the detention record, including the order and grounds served. The authority for the detention flows from the order of detention itself, which the detenu or the Court can read and discern therefrom the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen.

58. Therefore, even in the absence of elaborate pleadings, where the order itself or the materials disclosed raise a

serious doubt that the detaining authority misconceived the extent of its powers, applied a wrong test, acted on extraneous considerations, or failed to address the statutory pre-requisites, the Court ought not to shut its eyes. Without embarking upon re-appreciation of evidence or substituting its own view on the adequacy of material, the Court is entitled to examine whether the order discloses: (i) a lawful nexus between the alleged activity and the statutory purpose (e.g., "public order" as distinct from "law and order"), (ii) clear, precise and self-explanatory grounds enabling an effective representation under Article 22(5), and (iii) strict adherence to the procedural timelines and safeguards. Any detention order which, on its own terms, travels beyond the power conferred or is vitiated on these jurisdictional parameters cannot be sustained and is vulnerable to interdiction in habeas jurisdiction.

59. In the case of ***Ameena Begum v. State of Telangana***[25], the Hon'ble Supreme Court collated and laid down the test for orders of preventive detention in the following terms:

> *"28. In the circumstances of a given case, a constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:*
> *28.1. The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;*
> *28.2. In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;*

25 (2023) 9 SCC 587

28.3. Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;
28.4. The detaining authority has acted independently or under the dictation of another body;
28.5. The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;
28.6. The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;
28.7. The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;
28.8. The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;
28.9. The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and
28.10. The timelines, as provided under the law, have been strictly adhered to.

29. Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong."

60. Accordingly, the settled position of law is that while the Court does not re-appreciate evidence or substitute its own assessment for the subjective satisfaction of the detaining authority, it is duty-bound to scrutinise whether the detention is rooted in relevant, proximate and rationally

probative material, whether the authority has applied its mind independently within the confines of the statute, whether the grounds are precise and self-explanatory so as to enable an effective representation under Article 22(5), and whether the mandatory timelines and procedural safeguards have been strictly complied with. Any detention which fails on these touchstones, now authoritatively collated in ***Ameena Begum (supra)***, ceases to be preventive in nature and becomes an impermissible curtailment of liberty, warranting interference in habeas jurisdiction.

QUESTIONS FOR CONSIDERATION

61. The sum and substance of the present dispute is whether the continued custody of the detenues under the impugned preventive detention orders can be sustained in law, having regard to the constitutional limits on preventive detention and the settled distinction between "law and order" and "public order". The challenge essentially turns on the legality of the decision-making process and the validity of the foundation of the detention. The matter, therefore, warrants determination of the following questions:

I. Whether the constitutional and statutory safeguards governing preventive detention, including supply of relied-upon material, consideration of representations, reference to and opinion of the Advisory Board, and adherence to prescribed timelines, were duly complied with.

II. Whether the detaining authority's satisfaction was reached in accordance with law, on relevant and

proximate material, and whether the grounds are precise and sufficient to enable an effective representation under Article 22(5).

III. Whether the impugned detention orders are founded on material that legitimately pertains to "public order", as distinguished from a mere "law and order" situation.

ANALYSIS

I. Whether the constitutional and statutory safeguards governing preventive detention, including timely consideration of representations and adherence to prescribed timelines, were duly complied with.

62. The National Security Act, 1980 prescribes a precise and sequenced chain of procedural safeguards, each operating as a mandatory check upon the executive's power to deprive a person of liberty without trial. These safeguards are not mere directory formalities, they are the constitutional price exacted for the extraordinary power of preventive detention, and any breach thereof renders the detention or its continuance illegal. As the Hon'ble Supreme Court reminded in **Sunil Fulchand Shah** ***(supra)***, the safeguards available to a person against whom a detention order has been passed are limited, and therefore all procedural safeguards provided by law must be strictly complied with, any default in maintaining time-limits having the effect of rendering the detention or continued detention illegal.

63. This Court, therefore, first examines whether each of these safeguards was duly observed in the present cases,

as also whether the requisite satisfaction was independently arrived at by the detaining authority, in terms of the tests laid down in **Ameena Begum** ***(supra)***.

Approval by State Government under Section 3(4)

64. Since the detention orders were made by the District Magistrate, Jalaun, who is an officer empowered under Section 3(3) of the Act, Section 3(4) mandated that the fact of detention, along with the grounds and other relevant particulars, be forthwith reported to the State Government, and that the order would not remain in force for more than twelve days unless approved by the State Government within that period. In the present case, the detention orders dated 25.04.2025 and 28.04.2025 were approved by the State Government on 03.05.2025, which falls within the prescribed period of twelve days from the respective dates of detention. The requirement of Section 3(4) is accordingly found to have been complied with.

Reporting to Central Government under Section 3(5)

65. Section 3(5) requires that when any order is made or approved by the State Government, 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 other relevant particulars. In the present case, the detention orders along with connected material were forwarded to the Central Government vide letter dated 05.05.2025, i.e., within seven days of the approval dated 03.05.2025. The requirement of Section 3(5) is accordingly found to have been complied with.

Communication of grounds under Section 8 and Article 22(5)

66. Section 8 of the Act, read with Article 22(5) of the Constitution, requires that the detaining authority communicate to the detenu, as soon as may be and ordinarily within five days, the grounds on which the detention order has been made, and afford the earliest opportunity to make a representation. As the Hon'ble Supreme Court explained in **Shalini Soni *(supra)***, Article 22(5) has two inseparable facets, communication of grounds and opportunity of representation, and the grounds must be self-sufficient and self-explanatory, comprising not merely inferential conclusions but the constituent factual material relied upon, including supply of documents referred to therein.

67. In the present case, an examination of the grounds of detention reveals that the detaining authority relied upon five specific documents, which were enclosed therein, namely, the forwarding letter of the Inspector-in-Charge, Police Station Kotwali Kalpi dated 25.04.2025, the detention proposal dated 25.04.2025, the forwarding letter of the Circle Officer Kalpi dated 26.04.2025, the forwarding letter of the Additional Superintendent of Police Jalaun dated 26.04.2025, the report of the Local Intelligence Unit, Orai dated 03.04.2025, and the letter of the Superintendent of Police Jalaun dated 27.04.2025. These documents were expressly identified in the grounds and their attested copies were enclosed for the detenues' perusal. The detenues thus had before them not merely the grounds but the entirety of the relied-upon material when making their representations.

68. Thus, the record discloses that the grounds of detention and all relied-upon documents were duly served upon the detenues, and that the detenues were able to and did submit representations dated 07.05.2025/08.05.2025 against the impugned detention orders. No specific grievance of non-supply of relied-upon documents or of inadequacy of grounds disabling representation has been substantiated before this Court by the petitioners. The requirements of Section 8 and Article 22(5) are accordingly found to have been complied with.

Consideration of representations

69. The representations submitted by the detenues dated 07.05.2025/08.05.2025 were duly considered by the State Government. The representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar was rejected on 21.05.2025, with communication to the respective detenues following on the next day. Copies of the representations were also placed before the Advisory Board. No infirmity in the consideration or communication of the outcome of these representations has been demonstrated before this Court.

Reference to Advisory Board under Section 10

70. Section 10 mandates that in every case of detention under the Act, the appropriate Government shall, within three weeks from the date of detention, place before the Advisory Board the grounds of detention, the representation if any, and where the order is made by a District Magistrate the officer's report under Section 3(4) as well. In the

present case, as the uncontroverted record suggests the matter and all relevant material was placed before the U.P. Advisory Board on 05.05.2025, which is well within three weeks from the respective dates of detention. The requirement of Section 10 is accordingly found to have been complied with.

Procedure of Advisory Board under Section 11

71. Section 11(1) requires the Advisory Board to submit its report to the appropriate Government within seven weeks from the date of detention. The detenues were informed of the hearing date and were permitted to appear before the Advisory Board along with a next friend as contemplated under Section 11(4). The detenues duly appeared before the U.P. Advisory Board on 28.05.2025 and were heard in person along with Government officials. The Advisory Board thereafter submitted its report, which was received by the State Government on 05.06.2025. Reckoning from the earliest detention date of 25.04.2025, the report was received within the seven-week period mandated by Section 11(1). The requirements of Section 11 are accordingly found to have been complied with.

Confirmation under Sections 12 and 13

72. The Advisory Board opined that sufficient cause existed for the preventive detention of the petitioners under the National Security Act, 1980. Acting upon the said opinion, the State Government, upon independent reconsideration of the entire material, confirmed the detention orders vide order dated 12.06.2025 under Sections 12 and 13 of the

Act, directing continuance of detention for a period of twelve months from the respective dates of detention, which falls within the maximum period prescribed under Section 13. The confirmation thus reflects independent application of mind by the State Government and is not a mere rubber-stamping of the Advisory Board's opinion, satisfying the requirement in **Ameena Begum** ***(supra)*** that the detaining authority's satisfaction be reached independently and not under the dictation of another body (para 28.4).

73. Thus, upon a careful examination of the procedural record, and testing the same against the parameters laid down in **Ameena Begum** ***(supra)***, this Court finds that the entire chain of statutory safeguards, i.e. from the making of the detention order and its approval by the State Government, through the communication of grounds, consideration of representations, reference to and hearing before the Advisory Board, receipt of the Board's opinion, and final confirmation by the State Government, has been observed in strict compliance with the timelines and requirements prescribed under Sections 3(4), 3(5), 8, 10, 11, 12 and 13 of the National Security Act, 1980, and with the constitutional mandate of Article 22(5). The requisite satisfaction has been independently arrived at by the detaining authority at each stage. No procedural infirmity has been made out by the petitioners on this count, and accordingly, Question I is answered against the petitioners.

II. Whether the detaining authority’s satisfaction was reached in accordance with law, on relevant and proximate material,

with clear and specific grounds sufficient to enable an effective representation under Article 22(5).

74. The second issue that needs to be answered is whether all relevant circumstances were considered or whether extraneous factors weighed in the mind of the detaining authority leading to the conclusion that for prevention of further crimes by the said person(s), they ought to be detained. Incidentally, the issue of whether application of mind is manifest in first ordering detention and then confirming it by continuing such order upon rejection of the representation filed on behalf of the detenu would also be required to be answered.

A. Whether all relevant circumstances were considered and whether the satisfaction was independently reached?

Independence of the detaining authority and the 03.04.2025 communication (Ameena Begum, para 28.4)

75. The petitioners' record discloses a communication dated 03.04.2025 issued from the confidential section to the Superintendent of Police, Jalaun, indicating that if the petitioners were released on bail, they were likely to repeat the alleged offence. It was urged, by implication, that this communication predetermined the detaining authority's conclusion and that the detention orders were not the product of independent application of mind but were instead passed under the dictation or influence of another body.

76. This Court is unable to accept this contention. An examination of the grounds of detention themselves dispels

any such inference. The grounds expressly identify the 03.04.2025 communication as a report of the Inspector of the Local Intelligence Unit, Orai, a field-level intelligence assessment forwarded through the chain of command. Crucially, this document was enclosed as one of five Annexures to the grounds of detention and supplied to the detenues for their perusal, demonstrating complete transparency in its use. It was not a direction to detain; it was an intelligence input, one component among a layered chain of material that was placed before the detaining authority along with the forwarding letter of the Inspector-in-Charge dated 25.04.2025, the detention proposal dated 25.04.2025, the forwarding letters of the Circle Officer Kalpi and Additional Superintendent of Police Jalaun dated 26.04.2025, and the letter of the Superintendent of Police Jalaun dated 27.04.2025.

77. The detention orders dated 25.04.2025 and 28.04.2025 were passed by the District Magistrate on the basis of this consolidated, multi-layered assessment by multiple officers across different levels of the administrative hierarchy, each independently evaluating the material before forwarding their recommendation. The sequential reporting chain from the Inspector-in-Charge through the Circle Officer and Additional Superintendent of Police to the Superintendent of Police and finally to the District Magistrate is precisely the institutional mechanism the statute contemplates to ensure that the detaining authority receives a field-tested, independently verified assessment before forming its satisfaction. No material has been placed before this Court to demonstrate that the District Magistrate was directed to pass the detention order or that his satisfaction was pre-

empted or overridden by any external authority. The requirement of Ameena Begum para 28.4 is accordingly satisfied.

Application of mind to relevant circumstances (Ameena Begum, para 28.2)

78. It is well settled that the subjective satisfaction of the detaining authority, while not open to challenge on sufficiency, must reflect genuine application of mind to all relevant circumstances, without being coloured by extraneous considerations. A particularly significant feature of the grounds in the present case is that the detaining authority has expressly adverted to the correct legal test. The grounds themselves employ the phrase "even tempo of life" rendered in Hindi as "जनजीवन के सामान्य प्रवाह, सामान्य निर्वहन, सामान्य शान्ति, अमन चैन (इवेन टैम्पो आफ लाइफ)" which is the very touchstone of the distinction between law and order and public order as laid down by the Hon'ble Supreme Court in **Ram Manohar Lohia *(supra)*** and **Arun Ghosh *(supra)***. The deliberate use of this phrase in the grounds demonstrates that the detaining authority applied its mind not merely to the commission of an offence but specifically to the impact of the alleged activity upon the even tempo of community life which is the precise inquiry that the law demands. This is a strong indicator of genuine and informed application of mind to the relevant statutory purpose.

79. Further, the detention orders record separate satisfaction in respect of each detenu Sikandar, Saiyyaj Ali and Hasnen on the basis of their individual roles as disclosed in the investigation. No material extraneous to the scope and purpose of the National Security Act has been

shown to have influenced the detaining authority's satisfaction. The requirement of para 28.2 is accordingly satisfied.

Rationally probative material (Ameena Begum, para 28.6)

80. As held in **Khudiram Das *(supra)***, the satisfaction of the detaining authority must be grounded on materials which are of rationally probative value, the grounds must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. In the present case, the material before the detaining authority was neither thin nor speculative. It comprised: the FIR dated 31.03.2025 recording recovery of 2-3 quintals of beef, cattle found tied at the spot, and recovery of bones, skin and weapons; field reports from the Inspector-in-Charge, Circle Officer, Additional Superintendent of Police and Superintendent of Police; a Local Intelligence Unit report dated 03.04.2025 assessing the community impact of the incident; and specific ground-level intelligence regarding the likelihood of repetition upon release on bail. Taken together, this constitutes a substantial body of rationally probative material capable of supporting the detaining authority's satisfaction. The requirement of para 28.6 is accordingly satisfied.

Live and proximate link (Ameena Begum, para 28.7)

81. It is equally settled that there must exist a live and proximate link between the past conduct of the detenu and the imperative need to detain him. Detention founded on stale material, with no rational nexus to an apprehended future act, cannot be sustained. In the present case, the

incident occurred on 30/31.03.2025. The detention orders were passed on 25.04.2025 and 28.04.2025, within approximately three to four weeks of the incident, and crucially, at a stage when two of the detenues had been granted bail and the third's bail application was pending. The grounds expressly record that the detenues were attempting to secure bail and that upon release there was every possibility of repetition of similar offences and of the communal atmosphere being vitiated. The proximity of the detention orders to both the incident and the bail orders is not evidence of mala fides, rather it reflects precisely the situation which the law of preventive detention is designed to address: that the ordinary criminal process, including the grant of bail, may be insufficient to prevent acts prejudicial to public order. The pendency of prosecution or grant of bail is no impediment to the making of a detention order, as this Court has noted in the preceding section. The live link between the incident of 30/31.03.2025 and the detention orders of 25/28.04.2025 is sufficiently proximate and cannot be characterised as stale. The requirement of para 28.7 is accordingly satisfied.

Precision and clarity of grounds effective representation under Article 22(5) (Ameena Begum, paras 28.8 and 28.9)

82. Article 22(5) of the Constitution and Section 8 of the Act together require that the grounds communicated to the detenu be precise, pertinent and relevant and not vague or inferential, so as to afford him a meaningful opportunity to make an effective representation. As held in **Shalini Soni *(supra)***, the grounds must be self-sufficient and self-explanatory, comprising not merely conclusions but the

constituent factual material relied upon. In the present case, the grounds of detention served upon each detenu contain specific particulars of the incident of 30/31.03.2025, the role attributed to each detenu individually, the recoveries made, the community impact in named localities of Kalpi town, village Guloli and surrounding areas, the administrative response necessitated, and the basis of the detaining authority's apprehension regarding future conduct. Five relied-upon documents as already discussed in the analysis of Question I were also enclosed therein. The grounds are thus not inferential labels but a detailed, factual narrative enabling each detenu to understand precisely why he was being detained and to make an informed representation. That the detenues did in fact make substantive representations dated 07/08.05.2025 which were duly considered and rejected is itself indicative that the grounds were not so vague as to disable representation. No specific ground has been assailed before this Court as being vague, non-existent or incapable of being responded to. The requirements of ***paras 28.8*** and ***28.9*** of **Ameena Begum** ***(supra)*** are accordingly satisfied.

Single incident and absence of prior criminal history

83. The petitioners have urged that the detention is founded essentially on a single FIR and that the detenues have no prior criminal history. It is true that preventive detention based on a solitary incident, with no antecedent criminal history, calls for closer scrutiny. However, the law does not prescribe a minimum number of incidents as a precondition for preventive detention. What is required is that the single incident, if relied upon, must be of such a

nature and magnitude as to rationally support the detaining authority's apprehension of future prejudicial conduct. As this Court shall examine in greater detail under Question III, the nature of the alleged activity in the present case, its timing on the first day of Chaitra Navratri, coinciding with the eve of the festival of Eid, its impact on communal harmony in named localities, and the scale of administrative response it necessitated is not a routine or isolated offence of a purely individual character. The detaining authority's satisfaction, even in the absence of a prior criminal history, cannot therefore be said to be irrational or without probative foundation.

B. Whether application of mind is manifest in the confirmation of detention?

84. The second limb of this question requires examination of whether the subsequent stages, viz. the rejection of the detenues' representations and the confirmation of the detention orders by the State Government, also reflect genuine and independent application of mind, or whether they were merely mechanical exercises rubber-stamping the initial detention.

85. This Court finds that the record discloses meaningful engagement at each subsequent stage. The representations filed by the detenues dated 07/08.05.2025 were independently considered by the State Government. The representations of Saiyyaj Ali and Hasnen were rejected on 20.05.2025, and that of Sikandar on 21.05.2025, reflecting considered decisions reached within a reasonable time of the representations being filed, and communicated to the detenues on the following day. Copies of the

representations were also placed before the Advisory Board, ensuring that the detenues' own case was before the independent statutory body.

86. The Advisory Board, after hearing the detenues in person on 28.05.2025, each of whom appeared with a next friend, and after considering the Government's material, independently opined that sufficient cause existed for the preventive detention of each detenu. The Board's opinion is thus not the product of a mechanical exercise but of an independent institutional assessment after hearing both sides.

87. Most significantly, the State Government did not merely act upon the Advisory Board's opinion as a formality. The confirmation order dated 12.06.2025 records that the State Government, upon independent reconsideration of the entire material, confirmed the detention orders under Sections 12 and 13 of the Act. This independent reconsideration at the confirmation stage is a critical safeguard, since it ensures that the detaining authority's satisfaction is not a one-time, un-revisited conclusion but a continuing assessment of the necessity of detention in light of all available material including the detenues' own representations. The confirmation order thus reflects a fresh, independent application of mind and is not a rubber-stamping of either the initial detention order or the Advisory Board's opinion.

88. No material has been placed before this Court to suggest that the rejection of representations or the confirmation of the detention orders was perfunctory,

mechanical, or devoid of application of mind. The requirement of **Ameena Begum** ***(supra) para 28.1***, that the order be based on the requisite satisfaction of the detaining authority, is accordingly found to be satisfied not merely at the stage of the initial detention order but throughout the chain of executive decision-making.

89. Thus, upon examination of the material on record and testing the same against the parameters in **Ameena Begum** ***(supra),*** this Court finds that the detaining authority's satisfaction was independently and lawfully reached, on relevant and rationally probative material drawn from a layered chain of field assessments and intelligence inputs, with a live and proximate link to the apprehended future conduct. The grounds served upon the detenues were precise, pertinent, self-explanatory and supported by five enclosed Annexures, enabling effective representations which were duly considered. The detaining authority demonstrably applied the correct legal test by expressly adverting to the "even tempo of life" standard in the grounds themselves. Application of mind is further manifest not merely in the initial detention order but throughout in the considered rejection of representations, the independent assessment by the Advisory Board after hearing the detenues, and the State Government's independent reconsideration at the confirmation stage. No infirmity in the detaining authority's satisfaction or in the clarity of the grounds has been established.

90. Accordingly, Question II is answered against the petitioners.

III. *Whether the impugned detention orders are founded on material that legitimately pertains to "public order", as distinguished from a mere "law and order" situation.*

91. Turning our attention in the instant case to Section 3 of the Act, the Government has to arrive at a subjective satisfaction that the said person has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes "public order". An order of detention under Section 3(2) of the Act can be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". Therefore, if the impugned detention order fails to differentiate between offences which create a "law and order" situation and which prejudicially affect or tend to prejudicially affect "public order", the same would be rendered unsustainable.

92. What needs to be addressed now with respect to the detention orders is whether the alleged acts of commission for which the detenu has been kept under detention are prejudicial to "public order". While addressing this issue, it has to be first understood as to how the Hon'ble Supreme Court has distinguished between disturbances related to "law and order" and disturbances caused to "public order".

93. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, the Hon'ble Supreme Court has clearly carved out the distinction between "law and order" and "public order". A Constitution

Bench of the Hon'ble Supreme Court in ***Ram Manohar Lohia v. State of Bihar***[26], expounded the difference between "law and order" and "public order". Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) expressed the same 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."*

94. Further, as illustrated in ***Arun Ghosh v. State of W.B. (1970) 1 SCC 98,*** it is thus evident that for an act to qualify as a disturbance to public order, the specific activity must

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26 *1965 SCC OnLine SC 9*

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, is that: *does the offending act lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed*

95. In ***Arun Ghosh*** case, the detenu was detained since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. In the process of quashing the impugned order, the Hon'ble Supreme Court while referring to the decision in ***Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9*** ruled as under:

> *"3. … Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. … It is always a question of degree of the harm and its effect upon the community. … This question has to be faced in every case on facts. There is no*

formula by which one case can be distinguished from another."

96. In ***Kuso Sah v. State of Bihar, (1974) 1 SCC 185,*** the Hon'ble Supreme Court held as under:

"4. … The two concepts have well defined contours, it being well-established that stray and unorganised 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. …

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6. … The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised."

97. Having analysed the aforementioned authorities, this Court must first apply the settled distinction between "law and order" and "public order" as not every infraction of law disturbs public order; the act must affect the community or the public at large and disturb the "even tempo of life" in the locality. Therefore, the key inquiry is the degree, reach and impact: does the incident (and the apprehended future conduct) show a community-wide disturbance (fear or panic or probable communal tension) rather than an isolated offence?

Application to the facts of the present case

98. With the above principles as the lodestar, this Court now turns to examine whether the material before the

detaining authority in the present case legitimately crosses the threshold from "law and order" into "public order".

99. The incident of 30/31.03.2025 cannot, on a fair reading of the grounds of detention, be characterised as an isolated offence affecting only the individuals involved. The grounds paint a picture of a community-wide disturbance of a particularly grave character, for the following reasons.

The timing a double festival confluence

100. The incident occurred on the first day of Chaitra Navratri. As the grounds expressly record, the very next day was Eid, one of the most important and sensitive festivals in the Islamic calendar. The confluence of these two festivals, one of the most sacred occasions for the Hindu community and the most significant for the Muslim community created an atmosphere of extraordinary communal sensitivity in the locality. The slaughter of bovine animals by the accused on the first day of Navratri, in circumstances where the cow is venerated as sacred by the Hindu community, was not merely a criminal act, it was an act that directly and foreseeably struck at the religious sentiments of a significant section of the community at a moment of heightened communal sensitivity. The grounds record that this hurt the sentiments of the Hindu community and that the fear of communal frenzy spreading was real and immediate. The timing of the incident thus elevates it qualitatively beyond the category of an ordinary criminal offence into territory where its impact upon community life and public order becomes manifest.

Community-wide fear, terror and behavioural change

101. The grounds of detention record with specificity that the incident caused fear and terror, "भय व आतंक" not merely among the parties to the incident but among the general public in Kalpi town, village Guloli and surrounding areas. This fear was not abstract or inferential, it manifested in concrete behavioural change: the general public in Kalpi town and surrounding areas stopped leaving their cattle outside their homes and stopped tying them outside, out of fear. This is a precise and specific indicator of the kind of community-wide impact that the Hon'ble Supreme Court in **Arun Ghosh** ***(supra)*** described as the disturbance of the "even tempo of life" of the community. The disruption of a routine aspect of daily agricultural and community life, the keeping and grazing of cattle across an entire locality is not the hallmark of a law and order situation; it is evidence of a disturbance that has penetrated the normal current of community life.

Tension between two communities and risk of communal violence

102. The grounds further record that the incident created a tense atmosphere between people of the Hindu and Muslim communities in Kalpi town and surrounding areas. The general public began viewing the incident as a conspiracy to cause riots and communal violence "दंगा फसाद कराने की साजिश". Preparations for demonstrations had begun, and letters were submitted by social and religious organizations seeking strict action. The Local Intelligence Unit report dated 03.04.2025, a contemporaneous field assessment, not a post-hoc reconstruction recorded that public order had been completely shattered "लोक व्यवस्था छिन्न-भिन्न हो गयी थी"

and that there was a strong possibility of communal harmony being disturbed. This is precisely the kind of inter-community tension that the Hon'ble Supreme Court in **Ram Manohar Lohia** ***(supra)*** described as raising the apprehension of public disorder going beyond a mere law and order problem to threaten the fabric of communal co-existence in the locality.

Unprecedented administrative response

103. The scale and nature of the administrative response to the incident is itself a powerful indicator of the degree of public order disturbance. The grounds record that in order to manage and control the atmosphere of tension, fear and terror, the following extraordinary measures were taken: police forces from other police station areas of the district were deployed at sensitive locations in Kalpi town and village Guloli as picket and patrol parties; a riot control drill was conducted in Kalpi town; the Superintendent of Police Jalaun, Inspector-in-Charge Kalpi, Sub-Divisional Magistrate Kalpi and Circle Officer Kalpi personally conducted foot patrols; adequate police force conducted foot patrolling at sensitive locations during both day and night; communication was established with the general public to instill a sense of security; and a Peace Committee meeting was organised and dialogue was held with both communities. It is a well-recognised principle that the deployment of riot control measures, the convening of Peace Committee meetings, and the personal presence of senior district officials on patrol are responses reserved for situations of genuine public order breakdown, not for

ordinary law and order incidents that can be managed through normal policing.

The detaining authority's application of the correct legal test

104. As this Court has already noted in the context of Question II, the grounds of detention themselves employ the phrase "even tempo of life" viz. "जनजीवन के सामान्य प्रवाह, सामान्य निर्वहन, सामान्य शान्ति, अमन चैन (इवेन टैम्पो आफ लाइफ)" while recording that the detenues' activities have become prejudicial to the maintenance of public order. The deliberate and conscious use of this very phrase, the touchstone laid down by the Hon'ble Supreme Court in **Ram Manohar Lohia** ***(supra)*** and **Arun Ghosh** ***(supra)*** demonstrates that the detaining authority was alive to the distinction between law and order and public order and consciously found that the present case fell within the latter category. The present case is thus materially distinguishable from cases where detention orders have been struck down on the ground that the detaining authority merely labelled an offence as a public order disturbance without engaging with the substance of that distinction.

The apprehension of future prejudicial conduct

105. Preventive detention is directed not at punishing past conduct but at preventing future conduct prejudicial to the statutory purpose. The grounds expressly record that upon release on bail, there is every possibility that the detenues will again commit similar offences of cattle slaughter, and will make every effort to vitiate the communal atmosphere in Kalpi town and surrounding areas. This apprehension is not speculative, it is grounded in the nature, scale and

communal impact of the original incident, the intelligence assessment of the Local Intelligence Unit, and the field-level assessment of multiple officers across the administrative hierarchy. Given the communal sensitivity of the area, the confluence of festivals, and the demonstrated willingness of the detenues to commit the alleged acts in circumstances of maximum communal provocation, the detaining authority's apprehension of future prejudicial conduct cannot be said to be without rational foundation.

The present case is not Arun Ghosh

106. In **Arun Ghosh** ***(supra)***, the detenu's reprehensible conduct teasing, harassing and molesting young girls was found to fall short of public order because it affected only specific individuals and did not disturb the community at large. The present case is of an entirely different character. The alleged activity here did not merely affect the individuals directly involved, it generated community-wide fear and behavioural change across multiple localities, created inter-community tension between Hindus and Muslims, risked erupting into communal violence, necessitated riot control measures and Peace Committee interventions, and struck at the religious sentiments of a significant section of the community on one of its most sacred occasions. The degree, reach and impact of the alleged activity in the present case places it squarely beyond the Arun Ghosh category of individual-directed conduct, and within the territory of genuine public order disturbance as described in **Ram Manohar Lohia** ***(supra)*** and **Kuso Sah** ***(supra)***.

107. Thus, upon a careful examination of the grounds of detention in the light of the settled legal principles governing the distinction between "law and order" and "public order", this Court finds that the impugned detention orders are founded on material that legitimately and demonstrably pertains to "public order". The alleged activity and its aftermath community-wide fear and behavioural change, inter-community tension, risk of communal violence, extraordinary administrative response, and a contemporaneous intelligence assessment of public order collapse collectively establish a disturbance of the even tempo of community life in named localities going well beyond an isolated criminal offence. The detaining authority not only had before it rationally probative material establishing a public order disturbance but also expressly applied the correct legal test in the grounds themselves. No case has been made out that the detention orders have been founded on a mere law and order situation dressed up as a public order concern.

108. Accordingly, Question III is answered against the petitioners.

FINDINGS & CONCLUSION

109. Preventive detention, conceived as an extraordinary measure by the Founding Fathers and Mothers of our Constitution, should not be rendered ordinary with its invocation on a routine basis. To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the "golden triangle" formed by Articles 14, 19 and 21, are enforced in

letter and spirit. In this light, once the safeguards and tests against misuse of such provision are satisfied, a preventive detention order may be sustained to nip in the bud the risk of disturbing public order.

110. In view of the foregoing discussion, this Court records its findings on the three questions for consideration as under:

a. On Question I, this Court finds that the entire chain of constitutional and statutory safeguards governing preventive detention from the making of the detention order and its approval by the State Government, through the communication of grounds along with all relied-upon documents, the consideration of representations, the reference to and independent hearing before the Advisory Board, and the final confirmation by the State Government has been observed in strict compliance with the timelines and requirements prescribed under Sections 3(4), 3(5), 8, 10, 11, 12 and 13 of the National Security Act, 1980, and with the constitutional mandate of Article 22(5). No procedural infirmity has been established.

b. On Question II, this Court finds that the detaining authority's satisfaction was independently and lawfully reached on relevant and rationally probative material, drawn from a layered chain of field assessments and intelligence inputs. The grounds served upon the detenues were precise, pertinent and self-explanatory, supported by five documents enclosed comprising the forwarding letter of the Inspector-in-Charge Kotwali

Kalpi, the detention proposal, the forwarding letters of the Circle Officer Kalpi and Additional Superintendent of Police Jalaun, the Local Intelligence Unit report dated 03.04.2025, and the letter of the Superintendent of Police Jalaun, each representing an independent tier of assessment, and collectively constituting a robust evidentiary foundation that was transparently placed before the detenues to enable effective representations. Those representations were duly considered and rejected at each stage. Application of mind is manifest not merely in the initial detention order but throughout, viz in the considered rejection of representations, the independent assessment by the Advisory Board after hearing the detenues in person, and the State Government's independent reconsideration at the confirmation stage. The detaining authority demonstrably applied the correct legal test by expressly adverting to the "even tempo of life" standard in the grounds themselves reflecting not a mechanical invocation of statutory language but a conscious and informed engagement with the precise legal distinction that the law demands.

c. On Question III, this Court finds that the impugned detention orders are founded on material that legitimately and demonstrably pertains to "public order" as distinguished from a mere "law and order" situation. The alleged activity and its aftermath community-wide fear and behavioural change across named localities, inter-community tension between Hindus and Muslims, a real risk of communal violence,

an extraordinary administrative response including riot control drills and Peace Committee interventions, and a contemporaneous Local Intelligence Unit assessment of public order collapse collectively establish a disturbance of the even tempo of community life going well beyond an isolated criminal offence. The timing of the incident on the first day of Chaitra Navratri, coinciding with the eve of Eid, further underscores the communal sensitivity of the context in which the alleged acts were committed and the apprehension of future prejudicial conduct upon release.

111. This Court therefore finds that the impugned detention orders satisfy the standards laid down in **Ameena Begum v. State of Telangana**[27], and are founded on relevant and proximate material demonstrating disturbance of public order. Statutory timelines and representation requirements have also been complied with. Consequently, the impugned detention orders do not disclose procedural or legal infirmity warranting interference by this Court in exercise of its writ jurisdiction. Hence, in light of the aforesaid, there are no cogent reasons to entertain the petitions and allow the prayers sought therein. In the aforesaid terms, the petitions stand dismissed.

112. Pending applications, if any, also stand disposed of.

113. It is made clear that any observations made herein shall have no bearing whatsoever on the merits of the case during any other proceedings before any other Court.

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114. The judgment be uploaded on the website forthwith.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

February 26, 2026
Atul