**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)**

**WRIT PETITION No. 11538 of 2022**

Between:-

RANVEER @ RAMAN S/O SHRI BABU ANAND NEKIYA, AGED ABOUT 28 YEARS, OCCUPATION: BUSINESS 110-B, BHAWANIPURA, ANNAPURNA, INDORE (MADHYA PRADESH)

.....PETITIONER

*(BY SHRI ANSHUMAN SHRIVASTAVA, ADVOCATE.)*

AND

1. THE STATE OF MADHYA PRADESH THROUGH SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE DISTRICT MAGISTRATE INDORE (MADHYA PRADESH)
3. THE DEPUTY POLICE COMMISSIONER ZONE 3 INDORE (MADHYA PRADESH)
4. STATION HOUSE OFFICER THE STATE OF MADHYA PRADESH THROUGH POLICE STATION TUKOGANJ, INDORE (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI VALMIK SAKARGAYEN, GOVT. ADVOCATE.)*

*This petition coming on for hearing on this day,* ***JUSTICE VIVEK RUSIA*** *passed the following:*

**(Heard on 14/06/2022)**
**(Order Passed on 30/06/2022)**

With the consent of the parties heard finally.

The petitioner has filed this present petition through his father Babu Anand Nekiya challenging the validity of the order of detention dated 02.05.2022 passed by the District Magistrate, Indore in the exercise of powers under section 3(2) of the National Security Act, 1980.

**1.** The petitioner has been supplied the grounds for detention and according to which there would be a possibility of creating a dispute in relation to political and communal matters after release from jail on bail. Deputy Commissioner of Police Zone No.3, Indore vide letter dated 02.05.2022 requested District Magistrate, Indore for initiating detention proceedings against the petitioner on account of four criminal cases registered against him. The details are as under:-

| Sl. No. | Crime No. | Act | Court's Name | Challan No. | Fau. M. No. | Decision | Police Station |
|---|---|---|---|---|---|---|---|
| 1 | 411/2016 | 354-323-294-506-34 of IPC | District Court | 389/2016 Dtd. 17.09.2016 | 168498/2016 Dtd. 31.12.2016 | Pending before Court | Vijay Nagar |
| 2 | 177/2018 | 307-323-294-506-34 of IPC | District Court | 192/2018 Dtd. 26.07.2018 | 33327/2018 Dtd. 28.07.2018 | Pending before Court | Tukoganj |
| 3 | 244/2022 | 323-294-506-34 of IPC | District Court | - | - | Under investigation | Tukoganj |
| 4 | 247/2022 | 25 of Arms Act | District Court | - | - | Under investigation | Tukoganj |

**2.** Along with the aforesaid letter, the Deputy Commissioner of Police has given the list of five witnesses to be examined in this matter against the petitioner. After drawing proceedings under section 3 of the National Security Act,1980 the District Magistrate has passed an order of detention without prescribing the period of detention. However, the petitioner has been given the right to submit a representation before the District Magistrate, Secretary Department of Home Govt. of India New Delhi, Secretary Home Department Govt. of M.P. Bhopal and Advisory Board.

**3.** Being aggrieved by the aforesaid order the petitioner has approached this court by way of a writ petition challenging the detention order *inter alia* on the ground that the provisions of section 3(2) of the National Security Act,1980 should be exercised in a very cautious manner and after granting the fair opportunity to the aggrieved person. The petitioner has not been convicted in any

of the criminal cases. Out of four cases, two cases have been registered recently with the intention to initiate proceedings under National Security Act against him. The petitioner is the only earning member in the family and at the time of detention he was already in jail, therefore, there was no need to pass an order of detention in the apprehension of disturbance of public order. It is further submitted that the Constitution of India guarantees the right to live with dignity and freedom which has been taken away by the respondent by passing the impugned order with an ulterior motive. Hence the order is liable to be set aside.

**4.** The respondents have filed the reply by submitting that pursuant to the detention order the detenu has been taken into the custody and thereafter the order of detention was served upon him along with the order of detention along with grounds of detention. The date of arrest was duly communicated to the relatives of the petitioner. He has been informed about his right to present against the order of detention before the advisory board. It is further submitted that intimation with regard to the detention of the petitioner has been forwarded to the Central Government well within time. It is further submitted that this petitioner was actively indulged in criminal activities prejudicial to the public order and public safety therefore, the learned District Magistrate well within his power has rightly passed the order under section 3(2) of the National Security Act,1980. To support the impugned order the Government has placed reliance on the judgments passed by the Apex Court in the case of ***Attorney General of India V/s Amritlal Prajivandas (1994) 5 SCC 54***, in case of ***Ashok Kumar Vs. Delhi Administration (1982) 2 SCC 402***, in case of ***Bharat Petroleum Corporation Ltd. Vs. Varimani (2004) 8 SCC 579***, in case of ***C. Ronald Vs. UT Andaman & Nicobar Islands (2011) 12 SCC 428***, in case of ***Deepak Bajaj Vs. State of Maharashtra (2008) 16 SCC***

*14* and prays for dismissal of the writ petition.

**5.** Shri Anshuman Shrivastava, learned counsel for the petitioner has placed reliance on the judgment passed by the Apex Court in the case of ***Arun Ghosh Vs. State of West Bengal reported in 1970 (1) SCC 98*** in which distinction has been drawn between public order and law and order. It has been held that disturbance of public order is to be distinguished from the act directed against individuals who do not disturb society to the extent of causing a general disturbance of public tranquillity. It is further submitted that all the criminal cases registered against the petitioner are not to the nature that which can be termed as a disturbance of the public order. He has also placed reliance on the judgment passed by the Apex Court ***in the case of Yumman Ongli Lembi Leima Vs. State of Manipur and others*** reported in ***2012 (2) SCC 176*** where the petitioner therein was arrested on mere apprehension that he would likely be released on bail as a ground of his detention. The Apex Court has held that the personal liberty of the individual is the most precious and priced right guaranteed under the constitution in part three thereof. The State has been granted the power to curb such rights under the criminal laws and also under the laws of preventive detention which are required to be exercised with due caution as well as upon the proper appreciation of the facts. Shri Anshuman Shrivastava has further placed reliance on a judgment passed by the Division Bench of this Court in the case of ***Ravi Tiwari and others Vs. Union of India and Others*** reported in ***2003 (3) MPLJ 372*** in which the order of detention has been set aside which was not based upon the proper application of mind, relevant document etc.

**6.** Learned Government Advocate for the State has argued in support of the detention order and prays for dismissal of the writ petition. He has placed reliance over the judgment passed by the Division Bench of this Court in case of ***Smt. Kamini Yadav Vs.***

***State of M.P. & others in writ petition No.25986/2018.*** It is further submitted that the petition is premature as the order of the detention has not been approved by the advisory board and confirmed by the State Government. It is further submitted that even if the period of detention has not been prescribed in the detention order by virtue of section 13 of the National Security Act,1980 it shall not be more than 12 months from the date of detention. It is further submitted that during the arrest also order of detention can be passed in the possibility of disturbing the public order after release on bail. The petitioner has duly communicated the order of detention along with the grounds. The petitioner has the right to submit a representation challenging the order of detention hence the petition is liable to be dismissed.

We have heard learned counsel for the parties.

**7.** Vide letter dated 05.02.2022 the Deputy Commissioner of Police Zone No.3 Indore has requested the District Magistrate for initiating the proceedings of detention against the petitioner by supplying the list of four criminal cases registered against him. There are as many as four criminal cases registered against him. The details are as under:-

| Sl. No. | Crime No. | Act | Court's Name | Challan No. | Fau. M. No. | Decision | Police Station |
|---|---|---|---|---|---|---|---|
| 1 | 411/2016 | 354-323-294-506-34 of IPC | District Court | 389/2016 Dtd. 17.09.2016 | 168498/2016 Dtd. 31.12.2016 | Pending before Court | Vijay Nagar |
| 2 | 177/2018 | 307-323-294-506-34 of IPC | District Court | 192/2018 Dtd. 26.07.2018 | 33327/2018 Dtd. 28.07.2018 | Pending before Court | Tukoganj |
| 3 | 244/2022 | 323-294-506-34 of IPC | District Court | - | - | Under investigation | Tukoganj |
| 4 | 247/2022 | 25 of Arms Act | District Court | - | - | Under investigation | Tukoganj |

**8.** However, in none of the cases, the appellant has been convicted so far. One of the offences has been taken very seriously by the Deputy Commissioner of Police as well as the Collector

which took place in the year 2016 and for which he was facing trial under section 354 of the IPC but the same has not been concluded so far. Another case was registered in the year 2018 under sections 307, 323, 294, 506 and 34 of the IPC in which also he was arrested and released on bail. Two cases have been registered on 30.04.2022 for the offence under sections 307, 323, 294, 506 and 34 of the IPC and section 25 of the Arms Act. Learned counsel for the petitioner has submitted that the petitioner was arrested and produced before the magistrate and the magistrate has raised serious objection as to why he has been detained when all the offences are bailable in nature. The applicant was released and immediately he was arrested under section 151 of the IPC and sent to jail. The learned magistrate in the impugned order has noted that at present the petitioner is in jail but there is a strong possibility of he being released on bail and after release, he may threaten the general public and women and creates a dispute relating to political and communal matters. It is clear from the grounds of detention that the applicant has been directed to be detained merely on surmises and speculation. Under section 3(2) of the National Security Act,1980 the Central Government and the State Government may if satisfied with respect to any person that with a view to preventing him from acting in a prejudicial and to maintaining a public order make an order directing such person be detained, therefore, the order section 3(2) of the National Security Act,1980 is liable to be passed in order to prevent any person if the authorities are satisfied that he may act in a manner prejudicial to maintenance of public order. The Apex court in the case of ***Arun Ghosh (supra)*** has given a formula that one case can be distinguished from another case. A question to ask is, does it lead to disturbance of the current of life of the community to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society

undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. The relevant extract reads as under:-

> *"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: Dr. Ram Manohar Lohia v. State of Bihar ; Pushkar Mukherjee and Ors. v. State of West Bengal and Shyamal Chakraborty v. The Commissioner of Police, Calcuta and Anr. . In Dr. Ram Manohar Lohia's case this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. 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. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its*

*potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's(1) case examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is: Does it 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? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.*

*4. In the present case the acts of the petitioner affected the family of Phanindra C. Das and also two other individuals who were assaulted. The case is distinguishable from Writ Petition No. 102 of 1969 where three instances of rioting armed with lathis, iron rods and acid bulbs etc. were held sufficient to disturb the even tempo of public life in that locality and were treated as disturbance of public order. On the other hand in Writ Petition No. 179 of 1968 assaults on four persons A, B, C and D and throwing a cracker into a police wireless van were not held to add up to the disturbance of public order. They were treated as separate acts which affected individuals but did not affect the community at large.*

5. *In the present case all acts of molestation were*

*directed against the family of Phanindra C. Das and were not directed against women in general from the locality. Assaults also were on individuals. The conduct may be reprehensible but 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. The case falls within the dictum of Justice Ramaswami and the distinction made in Dr. Ram Manohar Lohia's case."*

**9.** All the criminal cases against the petitioner are not of such nature that it has ever affected or disturbed the society or the community which has further caused disturbance to the public order The court has held that it is not justified to detain a person as he is likely to be released on bail. In the present case, a criminal case under section 354 of the IPC was registered in the year 2016 and the detention order has been passed after 6 years after the said incident. Hence, there is no live link between the earlier incidence and the incidence in respect of which the detention order had been passed. The relevant paragraphs of ***Yumman Ongbi Lembi leima (supra)*** is reproduced below:-

"*23. Having carefully considered the submissions made on behalf of respective parties, we are inclined to hold that the extra-ordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention.*

*24. Article 21 of the Constitution enjoins that:*

*"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.*

*In the instant case, although the power is vested with the concerned authorities, unless the same are invoked and implemented in a justifiable manner, such action of the detaining authority cannot be sustained, inasmuch as, such a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution.*

*25. When the Courts thought it fit to release the Appellant's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified.*

*26. In addition to the above, the FIRs in respect of which the Appellant's husband had been arrested relate to the years 1994, 1995 and 1998 respectively, whereas the order of detention was passed against him on 31st January, 2011, almost 12 years after the last FIR No.190(5)98 IPS under Section 13 of the Unlawful Activities (Prevention) Act. There is no live link between the earlier incidents and the incident in respect of which the detention order had been passed.*

*27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention.*

**10.** Under the National Security Act, a person is liable to be detained if there is an apprehension that with a view to preventing him from acting in any manner prejudicial to the security of the State for maintenance of public order. It means his free movement in society is liable to be curbed out by passing the order of detention. But in the present case, the petitioner was already under custody and the order of detention has been passed only on the basis of the strong possibility that he would be released on bail and thereafter would repeat the crime. Even in the case of which has been strongly relied on by the Govt. Advocate i.e. ***Kamini Yadav (Supra)*** in similar facts and circumstances the order of the detention has been quashed as the detenu was already in custody at the time of passing of the detention order. The relevant extract reads as under:-

*"**16.** Therefore it is the settled position of law that the authorities are not precluded from passing an order of detention when the person concerned is in jail, but while passing the order of detention, they are required to apply their mind to the fact that the person concerned is already in jail and there are compelling reasons justifying such detention despite the fact that the detenu was already in detention and the compelling reasons implies that there*

*must be cogent material before the Detaining Authority on the basis of which it may be satisfied that the detenu is likely to be released from custody in the near future or taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.*

***17**. Whether the aforesaid requirements are fulfilled in this case or not ? In this regard the respondents tried to convenience the Court that the detaining authority was aware of the fact that the accused is already in jail. He draws our attention towards the report submitted by the Superintendent of Police and argued that, in the report, it was mentioned that the detenu has been arrested in Crime No.197/2018 and has been sent to the judicial custody. It was also mentioned that on 30.08.2018 the detenu was arrested in connection with Crime No.248/2018 and sent to the judicial custody. As per respondent the detenu was arrested in connection with Crime No.248/2018 and 197/2018 and was confined in custody. But the aforesaid fact is not reflected from the order passed by the detaining authority. In the order dated 11.10.2018, it is mentioned that :-*

> ***"it is necessary to detain him under Sub Section (2) of Section 3 of the National Security Act. 1980".*** *(राष्ट्रीय सुरक्षा अधिनियम 1980 की धारा 3 की उपधारा (2) के अधीन निरूद्ध किया जाना आवश्यक है ).*

*In para No.2, it is mentioned that:-*

> ***"may be so detained and kept in Netaji Subhash Chandra Bose Central Jail, Jabalpur"*** *(को निरूद्ध किया जाकर केन्द्रीय जेल जबलपुर में रखा जावे).*

*In para No.3 of the order, it is mentioned that:-*

> *"This order will be valid for a period of upcoming 03 (three) months from the date of actual detention" (यह आदेश अनावेदक को निरूद्ध किये जाने की वास्तविक तिथि से आगामी 03 (तीन) माह की अवधि के लिये वैध होगा).*

18. *The aforesaid quoted portion of the order shows that the detaining authority did not took the notice of the fact that the detenu is already in custody. We have minutely perused the impugned order dated 11.10.2018 passed by District Magistrate. In the said impugned order, it is not mention that the accused was in jail at the time of passing of the said order. It is not reflected from the said order that the detaining authority was aware of the fact that the accused was in jail at the time of passing of the said order. No any such material has been produced before this Court to establish such facts. Therefore, the impugned order clearly indicates the non application of mind by the detaining authority in respect of the possibility of the release of the Petitioner. Since, the*

*detaining authority was not made aware of the fact that the accused was in custody in relation to the investigation in two criminal cases, therefore, the detaining authority had no occasion to apply his mind in respect of possibility of the accused being released on bail and the probability of his involvement in such activities after release on bail. It is not clear from the order passed by the detaining authority that it was in the notice of the authority that the detenu was already in jail since 30.08.2018 otherwise the authority will not mention in para-3 that* ***"****this order will be valid for a period of upcoming 03 (three) months* ***from the date of actual detention"****. Before about 40 days back, the detenu was in custody, therefore, the satisfaction of the authority was required and should be mentioned in the order passed, but the authority passed the order in mechanical way by using a set proforma. Order did not fulfill the requirement of the law and the principle laid down by the Hon'ble Supreme Court and the High Court.*

11. Therefore, in view of the above, the order of detention dated 02.05.2022 is unsustainable and is accordingly quashed. The Writ Petition is allowed with the cost of Rs. 10,000.00 payable to the petitioner.

12. Certified Copy as per Rule.

**(VIVEK RUSIA)**
**JUDGE**

**(AMAR NATH KESHARWANI))**
**JUDGE**

**Ajit/-**

AJIT KAMALASANAN

Digitally signed by AJIT KAMALASANAN
DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENCH INDORE, ou=HIGH COURT OF MADHYA PRADESH BENCH INDORE, postalCode=452001, st=Madhya Pradesh, 2.5.4.20=156c9cedca1b74067 1db9f220a5e3ed6cba241ef fad892107d95ef0a1afc55b4, pseudonym=CFOFD9C36711CA738F527A5D61A1EE901C09EE29, serialNumber=7F08EE2D78BD57DA058F3247441C87E7E0817FB61F5E2ABCAEE63CAAA7B389FF, cn=AJIT KAMALASANAN
Date: 2022.06.30 18:06:09 +05'30'