REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1876 of 2019
@SLP (Crl.) No. 5487 of 2019

Khaja Bilal Ahmed **…Appellant**

Versus

State of Telangana & Ors **…Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The Division Bench of the High Court for the State of Telangana by its judgment dated 13 June 2019, dismissed a challenge to an order of detention dated 25 October 2018.

2 The appellant was detained under the provisions of sub-section 2 of Section 3 of the Telangana Prevention of Dangerous Activities of Boot-Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food

Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act 1986[1]. The order of detention was issued on 2 November 2018 by the Commissioner of Police, Rachakonda, Commissionerate and contained the following recitals:

> "WHEREAS, information has been placed before me that the offender Khaja Bilal Ahmed, S/o Khaja Hassan, age 41 yrs. Occ Business, Charminar, Hyderabad is a "Goonda" and has been habitually and continuously engaging himself in unlawful acts and indulging in the acts of goondaism by acting as a leader/member of criminal gang and committed gruesome and heinous offences like Murder/Attempt to Murder/ Rioting/Criminal trespass and Assault on Public Servants in the Police Station limits of Hyderabad City and Rachakonda Commissionerate and thereby caused harm, panic and terror among the innocent general public of the area and on account of his criminal activities, his presence in the locality is adversely affecting the public order and thus he has acting in a manner prejudicial to maintenance of public order apart from disturbing the peace, tranquility, social harmony in the society."

The order then sets out a reference to fourteen cases which were registered against the appellant under various heads of crime within the limits of Hyderabad City. These cases were registered between 2007 and 2016. One of the cases against the appellant under Sections 323 and 341 of the Indian Penal Code 1860[2] is stated to have been compromised in a Lok Adalat; in four cases, the appellant is stated to have been acquitted; five cases are stated to have been

[1] "Telangana Offenders Act 1986"
[2] "IPC"

transferred to the Special Investigation Team[3], Hyderabad City for further investigation and four cases are pending trial. The order of detention states that:

> "The above cases are referred as his antecedent, criminal history and conduct. Though, cases were registered, arrested by Police and a Rowdy sheet is being maintained at PS Rain Bazar of Hyderabad City, he could not mend his criminal way of life and continued to indulge in similar offences soon after coming out on bail."

The order of detention thereafter proceeds to state that in 2018, the appellant was implicated in Crime no 178 of 2018 under Sections 364, 302, 120B and 506 read with Section 34 of the IPC at PS Abdullapurmet of Rachakonda Commissionerate which is under investigation. The "dangerous activities of the offender and his associates" are stated to have caused panic and a feeling of insecurity in the minds of the general public living within the limits of Hyderabad City and Rachakonda Police Commissionerate, thereby disturbing the peace and tranquillity of the area in a manner prejudicial to the maintenance of public order. The order of detention was passed by the Commissioner of Police on the basis of the following satisfaction:

> "WHEREAS. I, Mahesh M. Bhagwat, IPS, Commissioner of Police, Rachakonda, am satisfied on examination of the material placed before me that the offender Khaja Bilal Ahmed has been repeatedly indulging himself in the manner of goondaism by acting a leader/member of criminal gang and committed gruesome offences such as Murder/Attempt Murders/ Rioting in an organized fashion, creating a feeling of insecurity to their life in the minds of General Public and thus disturbing peace and tranquility in society and acting in a manner prejudicial to maintenance of Public Order. He is a habitual offender and a 'Goonda' as defined in clause (g) of Section (2) of the Telengana Offenders Act 1986 (Act no. 13 of 2018)"

[3] "SIT"

3 On 26 October 2018, the appellant filed an application for bail[4] in Crime no 178 of 2018. The application for bail was allowed by the 14th Additional Metropolitan Magistrate on 26 October 2018 on the ground that the investigating agency had failed to complete the investigation within the period allowed by the proviso to Section 167(2) of the Code of Criminal Procedure 1973[5]. On 26 October 2018, when bail was granted by the 14th Additional Metropolitan Magistrate in Crime no 178 of 2018, an order of detention dated 25 October 2018 is stated to have been served on the appellant at 7:45 pm while he was still in jail custody.

4 On 2 November 2018, the brother of the appellant filed a Writ Petition[6] challenging the order of detention on the ground that it had not been confirmed within twelve days as contemplated under Section 3(3) of the Telangana Offenders Act 1986. On 2 November 2018, a copy of the order of the State government confirming the order of detention was served on the appellant. On 30 November 2018, a petition[7] seeking a writ of habeas corpus was instituted by the brother of the appellant before the High Court challenging the order of detention dated 25 October 2018 and the order of the State government dated 2 November 2018 confirming the detention.

5 On an interlocutory application[8] filed in the Writ Petition, the High Court by an order dated 27 February 2019 issued a direction for the release of the

[4] Cr.M.P. 1645 of 2018
[5] "CrPC"
[6] Writ petition no 41187 of 2018
[7] Writ petition no 43814 of 2018
[8] IA 1 of 2019

appellant from preventive detention on the condition that he would continue to abide by the terms imposed by the 14th Additional Metropolitan Magistrate for the grant of bail on 26 October 2018 in Crime no 178 of 2018. By a judgment dated 13 June 2019, the High Court dismissed the Writ Petition challenging the order of detention, which gave rise to the proceedings before this Court under Article 136 of the Constitution.

6 Before dealing with the rival submissions, it is necessary to set out the position of the fourteen criminal cases against the appellant which have been adverted to in the order of detention. This has been summarised in a tabular chart which was submitted to this Court by Ms Bina Madhavan, learned Counsel appearing on behalf of the State of Telangana. The chart is extracted below :

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
1	305/2012	147,148,188,153 r/w Section 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932	Transferred to SIT. Still under investigation
2	306/2012	147,148,332,188,153(A) R/W 149 of IPC	Transferred to SIT. Still under investigation
3	307/2012	147,148,332,307,188,153(A) r/w 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932	Transferred to SIT. Still under investigation
4	308/2012	147,148,382 r/w 149 of IPC	Transferred to SIT. Still under investigation
5	309/2012	147, 148, 427 r/w 149 of IPC	Transferred to SIT. Still under investigation
6	41/2007	147,148,324,506,153(A),159 of IPC	Pending trial
7	42/2007	147,148,506,427,153(A),159 of IPC	Pending trial
8	44/2007	147,148,324,506,153(A) r/w 149 of IPC	Pending trial
9	43/2007	147,148,448,427,506,153(A) r/w 149 of IPC	Pending trial

CASES IN WHICH ACQUITTED:

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
10	283/2012	149 , 353, 427 r/w 34 of IPC	Acquitted
11	257/2009	147, 353, 427, 332 r/w 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932 & Section 4 of PDPP Act of Reinbazar PS. Hyderabad city	Acquitted
12	47/2011	447,353,427 and 506 of IPC	Acquitted
13	14/2009	147,148,324,307,427, 506 r/w 149 of IPC & Section 27 of Indian Arms Act	Acquitted

CASE WHICH IS COMPROMISED:

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
14	272/2016	341 and 323 of IPC	Compromised in Lok Adalat vide order dated 08.09.2017

7 During the course of the proceedings before the High Court, a counter affidavit was filed by the Commissioner of Police stating that:

> "4. ... **the records revealed that the since 2009 to 2016 as many as (15) cases were registered against the detenu, for engaging himself in unlawful and dangerous activities. Among them (4) cases were in acquittal. The said cases are referred by way of his criminal background that the same are not relied upon.** In the recent past during the year 2018 the detenu was involved in Cr.No 178/2018, u/s Sections 374, 302, 120-B, 506 r/w 34 IPC, Abdullapurmet P.S. of Rachakonda Police Commissionerate., wherein the detenu and his associates kidnapped the deceased to an isolated area of Majeedpur village in the limits of Abdullapumet P.S., and stabbed him to death brutally, thereby created terror and a feeling of insecurity in the minds of general public, apart from disturbing peace and tranquility in the area. **Thus the activities of the detenu are prejudicial to maintenance of public order, affecting the public order adversely. The said case has been considered as ground for his detention.**"
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> (Emphasis supplied)

The above statement was reiterated in another part of the same counter affidavit in the following terms:

> "However, **the cases registered against him during the period 2009 to 2016 are not at all considered** for passing the detention order. **The same are referred by way of his criminal back ground only.**"
>
> (Emphasis supplied)

In other words, the order of detention was sought to be justified solely on the basis of Crime no 178 of 2018 registered against the appellant under Sections 364, 302, 120B and 506 read with Section 34 of the IPC. The genesis of the criminal case was spelt out in the counter affidavit filed before the High Court thus:

> "A-1 Khaja Bilal Ahmed was active member in AIMIM Party and elected as Corporator for GHMC Ward No: 29 in 2009 Elections and later joined in TPCC and now working as Telangana State Minority Vice President. The marriage of A-1 was solemnized in 2006 with Smt Rafath Sultana and due to some disputes, they got separated in March, 2018 in the presence of their community elders. The deceased Syed Aqeel, who was working with the detenu and residing nearby his house. Later, the deceased Aqeel got married to A-1's divorced wife Smt Rafath Sultana. As such, the A-1 felt shame in his community and bore grudge on deceased. The Detenu developed grudge against the deceased that the deceased defamed him after marrying his divorced wife. Up on which, the detenu along with his associates (A2 to A8) hatched a plan to eliminate the deceased and in execution of his plan, the detenu and his associates kidnapped the deceased in the early hours on 03-06-208, took him to an isolated area of Majeedpur village of Abdullapurmet Police station limits, where the detenu and his associates stabbed him to death brutally. The case is under investigation for apprehension of absconding accused and collection of further evidence."

8 It was in the above case that the appellant was released on bail on 26 October 2018 on the failure to file a charge-sheet within a period of ninety days. No charge-sheet has been filed till date.

9 In this backdrop, the following submissions have been urged on behalf of the appellant by Mr Sidharth Luthra, learned Senior Counsel:

I **The grounds relied upon by the Commissioner of the Police, Rachakonda Commissionerate in the detention order dated 25 October 2018 are stale and have no proximate or live link between the antecedent activities and the detention order as they are of the years 2007 and 2012 except for Crime no 178 of 2018:**

(i) The order of detention mentioned fifteen cases, but reliance is placed only on a single case bearing Crime no 178 of 2018 for crimes under Sections 302 and 364;

(ii) Out of the fifteen cases, the detenu has been acquitted in six cases; eight cases are pending trial out of which four cases date back to 2007, and four to 2012 and only Crime no 178 of 2018 under Sections 302 and 364 is pending investigation;

(iii) Until date no charge-sheet has been filed in Crime no 178 of 2018 dated 3 June 2018;

(iv) By the admission of the respondents, the order of detention has been passed on one solitary case; and

(v) In support of the submission that the order of detention was invalid, reliance has been placed on the decisions of this Court in **Sama**

Aruna v **State of Telangana**[9], **Lakshman Khatik** v **State of West Bengal**[10], **Rameshwar Shaw** v **District Magistrate Burdwan**[11] and **Yumman Ongbi Lembi Leima** v **State of Manipur**[12].

II **Non-confirmation of the detention order within three months would result in its automatic revocation.**

(i) The appellant was in detention from 25 October 2018 until 27 February 2019, for a period of four months without confirmation by the government under Section 12;

(ii) In response to a Right to Information[13] query dated 2 July 2019 lodged by the appellant's brother with the Superintendent, Central Prison, Cherlapalli, Medchal district, it was stated that the prison authorities had not received any confirmation or revocation of the detention order pertaining to the appellant;

(iii) The confirmation order dated 28 December 2018 was placed on the record for the first time during the course of the present proceedings in the additional grounds filed in the Special Leave Petition;

(iv) The confirmation order dated 28 December 2018 found no mention either in the High Court or in the first counter affidavit which was filed before this Court on 18 July 2019;

[9] (2018) 12 SCC 150
[10] (1974) 4 SCC 1
[11] AIR 1964 SC 334
[12] (2012) 2 SCC 176
[13] "RTI"

(v) The confirmation order clearly stated that the Superintendent of Jails, Central Prison "should serve the order on the detenu immediately"; and

(vi) It is a *sine qua non* for the continuation of the detention order beyond the period of three months that the appropriate government must confirm it within three months. In support of the argument, reliance has been placed on the decisions of this Court in **Nirmal Kumar Khandelwal** v **Union of India**[14] and **Cherukuri Mani** v **Chief Secretary, Govt of AP**[15].

III **The detention order dated 25 October 2018 categorically states that the appellant will be granted mandatory bail under Section 167 of the CrPC and therefore, has been passed only on the apprehension of bail being granted:**

(i) The detention order has been passed apprehending the grant of bail without following the criteria laid down by this Court in **Kamarunnissa** v **Union of India**[16], in which it was held:

> "13. In case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing."

[14] (1978) 2 SCC 508
[15] (2015) 13 SCC 722
[16] (1991) 1 SCC 128 [Also followed in **Champion R Sangma** v **State of Meghalaya** (2015) 16 SCC 253.]

IV **Adequate measures and remedies were available under ordinary law and hence there was no necessity to issue an order of preventive detention;**

V **The detention order dated 25 October 2018 was confirmed under Section 3(2) after a delay of eight days; and**

VII **The appellant was arrested in Crime no 178 of 2018 and was granted statutory bail under Section 167 CrPC on 26 October 2018. The order of detention was served on the appellant while he was in custody. The appellant was in custody until 27 February 2019 when an interim order of release was passed, which continued to remain in force until the High Court dismissed the petition on 13 June 2019. Aggrieved by the order of the High Court, the appellant moved the Vacation Bench of this Court which adjourned the proceedings on 25 June 2019. The Special Leave Petition was listed on 1 July 2019 when a notice was issued returnable in two weeks. The proceedings were listed on various dates and arguments were heard for final disposal.**

10 On the other hand, Ms Bina Madhavan, learned Counsel appearing on behalf of the State of Telangana submitted thus:

(i) In ordinary circumstances, the courts do not interfere with the subjective satisfaction of the detaining authority. Reliance has been placed upon the decision of this Court in **Subramanian** v **State of T N**[17];

[17] (2012) 4 SCC 699

(ii) A single offence can legitimately form the subject matter of an order of detention;

(iii) The order of detention dated 25 October 2018 was approved on 2 November 2018 as stipulated under Section 3(3) of the Telangana Offenders Act 1986. Accordingly, there was no delay in confirming the order;

(iv) The order of the Advisory Board was duly passed on 12 December 2018, and the State Government confirmed the detention on 28 December 2018;

(v) The reference to the antecedent criminal cases in the order of detention was only to indicate the background of the appellant who had been implicated in the past in several cases involving rioting of a communal nature; and

(vi) The appellant was implicated in a case involving the brutal murder of a person who had married his former wife and, having regard to the nature of the offence, it was open to the detaining authority to arrive at the satisfaction that there was a real possibility of the appellant indulging in prejudicial activity if he were to be released on bail.

11 The rival submissions fall for consideration.

12 The expression “goonda” is defined in the Telangana Offenders Act 1986 in the following terms:

> “(g) “goonda” means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences

punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code"

Section 3 contains the power to make orders of preventive detention:

"3. (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender [Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender] that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) 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 Government are satisfied that it is necessary so to do, they 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 (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the 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.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government 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 mean time, it has been approved by the Government."

Section 11 deals with the procedure before the Advisory Board:

"11. (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 Government or from any person called for the purpose through the Government or from the person concerned, and if, in any

particular case, the Advisory Board 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 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) 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.

(5) 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."

Section 12 provides for the action to be taken on the receipt of the report of the Advisory Board:

"12. (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 Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 13 as they think fit.

(2) In any case, where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith."

Section 13 provides for the maximum period of detention:

"13. The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention."

13 The order of detention in the present case contains a reference to fourteen cases which were instituted against the appellant between 2007 and 2016. The chart provided on behalf of the State Government which has been extracted earlier indicates that out of the fourteen cases, five cases which pertain to 2012 were transferred to the SIT for investigation; there being no change in that position. Four cases pertaining to 2007 are pending trial. The appellant has been acquitted in four cases of 2009, 2011, and 2012. The case of 2016 was compromised in a Lok Adalat on 8 September 2017.

14 In **Sama Aruna** v **State of Telangana**[18], this Court while construing the provisions of the Telangana Offenders Act 1986 held:

> "16. Obviously, therefore, the power to detain, under the 1986 Act can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. **There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account.** In *Golam Hussain* v. *State of W.B.* [*Golam Hussain* v. *State of W.B.*, (1974) 4 SCC 530 : 1974 SCC (Cri) 566] this Court observed as follows: (SCC p. 535, para 5)
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> "*5*. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory

[18] (2018) 12 SCC 150

> requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case."
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> **Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities.**"
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> (Emphasis supplied)

In the facts of that case, the Court held that the order of detention was passed on stale grounds, which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. This Court held thus:

> "17. **The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case.** A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. **The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it.** See *G. Reddeiah* v. *State of A.P.* [*G. Reddeiah* v. *State of A.P.*, (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and *P.U. Iqbal* v. *Union of India* [*P.U. Iqbal* v. *Union of India*, (1992) 1 SCC 434 : 1992 SCC (Cri) 184]. (Emphasis supplied)

15 In the present case, the order of detention states that the fourteen cases were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being

maintained at PS Rain Bazar of Hyderabad City and the appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background… (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents **only** if they

have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

16 Apart from the above position, Section 12 of the Telangana Offenders Act 1986 provides that the government, upon the report of the Advisory Board stating that there is sufficient cause for the detention of a person, may confirm the order of detention and continue the detention for such period not exceeding the maximum period specified in Section 13 "as they think fit". Consequently, under Section 12, the government has the discretion whether or not to confirm the detention upon receipt of the report of the Advisory Board recording sufficient cause for detention. The relevance of the action of the government upon the report of the Advisory Board has been discussed in a three-judge Bench decision of this Court in **Shibapada Mukherjee** v **State of W B**[19], where a similarly worded Section 12 of the West Bengal (Prevention of Violent Activities) Act 1970 was discussed. Justice J M Shelat speaking for the Bench held thus:

> "6. Section 10 of the present Act requires the State Government to refer the case to the Board within 30 days

[19] (1974) 3 SCC 50

> from the date of detention, and Section 11 requires the Board to submit its report within ten weeks from such date. **The reason for prescribing these periods is obvious, that is to enable the State Government to decide, in the event of the Board reporting that there is sufficient cause for detention to confirm the detention order and to continue the detention thereunder "for such period as it thinks fit". [Section 12(1).] The significant words in Section 12 are the words "confirm" the detention order and "continue" the detention thereunder, "for such period as" the State Government thinks fit. The order passed or the decision made under Section 12(1) by the State Government, thus, falls into two parts: (a) confirming the detention order upon the report of the Board as to the sufficiency of the cause for detention, and (b) deciding to continue the detention under that order**... **If on receipt of the Advisory Board's report, Government wants to continue the detention for a further period, it has got to make an order or a decision to confirm that order and continue the detention, for without such an order or decision the detention would not validly subsist beyond the period of three months.** Though, therefore, Section 12 does not in express terms lay down that the decision to confirm the detention order and to continue thereunder the detention is to be made before the expiry of three months, such a time-limit is implicit in the section. The reason is plain. As aforesaid, **Government cannot keep a person under detention for a day longer than three months if the report of the Board does not justify the detention. The continuation of detention beyond three months can only be made upon the Government obtaining a report showing sufficiency of cause before the expiry of the period of three months**... If there is no such decision to confirm the order and to continue the detention thereunder, detention has to come to an end on the expiry of three months from the date of detention. Such an order or decision has therefore, to be made before the period of three months, for without such an order the detention would otherwise cease to be valid."
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> (Emphasis supplied)

17 In the present case, the detenu was in detention between 25 October 2018 until 27 February 2019. The brother of the detenu submitted an RTI application to the Superintendent, Central Prison Cherlapalli. The query and the response provided are in the following terms:

S No	Particulars	Information Provided
1	While my brother was in detention under the detention order dated 25-10-2018 till 28-02-2019, did the Prison authorities received any confirmation/ revocation of the detention order by the Government u/s 12 of the "1986 Act" pursuant to appearance before the Advisory Board on 03-11-2018?	This institution has not received any Confirmation or Revocation order pertaining to the Detenu Prisoner No.723, Khaja Bilal Ahmed, S/o Khaja Hassan, from the date of production of said detenu prisoner before the Advisory Board of Preventive Detention to the date of release of the said detenu from this institution, viz., from 03-12-2019 to 28-02-2019.
2	If any such confirmation/ revocation was received in the case of Khaja Bilal Ahmed, Detenu no 723, was a copy of the same served to him?	Since no such Confirmation or Revocation order pertaining to the Detenu Prisoner no 723, Khaja Bilal Ahmed, S/o Khaja Hassan, was received in this institution, a copy of the order was not served to the said detenu prisoner.

18 The order of confirmation purported to have been passed by the State Government was annexed for the first time on 30 September 2019 to the additional counter affidavit filed in the proceedings before this Court by the Commissioner of Police, Rachakonda. The said order contains the following endorsement:

> "The Superintendent of Jails, Central Prison, Cheriapally, Medhal-Malajgiri Dist. (**he should serve the Order on the detenu immediately under proper dated acknowledgment** and arrange to read over and explain the contents of the same in the language known to the detenu and report compliance to the Government forthwith)."
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> (Emphasis supplied)

19 The order of confirmation found no mention either during the proceedings before the High Court or in the first counter affidavit which was filed before this

Court on 18 July 2019. The record indicates that no order of confirmation was served on the detenu between 28 December 2018 (the date on which it was purportedly passed) till the detenu continued to be in detention until 27 February 2019. The manner in which the order has surfaced, for the first time, in an additional counter affidavit filed before this Court casts serious doubt on whether such an order was at all in existence on the relevant date.

20 The detention order dated 25 October 2018 has to be set aside on the following grounds: (i) reference to stale and irrelevant grounds in the detention order by the detaining authority; and (ii) the manner in which the order of confirmation dated 28 December 2018 was presented before this Court, casts doubt on the existence of the order of confirmation in the first place. As regards the registration of Crime no 178 of 2018, the appellant was released on bail consequent upon the failure of the investigating authority to file a charge-sheet within ninety days. A charge-sheet, as has been pointed earlier, has not been filed till date. There was no reasonable basis on which the detaining authority could have come to a conclusion that:

(i) On being released on bail, the appellant would in all probability indulge in prejudicial activity; and

(ii) It was necessary to detain him, to prevent him from engaging in prejudicial activity. (See in this context **Kamarunnissa** v **Union of India**[20]).

[20] (1991) 1 SCC 128

21 We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 13 June 2019. The order of detention accordingly stands quashed.

22 Pending application(s), if any, shall stands disposed of.

…….....J
[Dr Dhananjaya Y Chandrachud]

…….....J
[Hrishikesh Roy]

New Delhi;
December 18, 2019.