ARUN GHOSH

v.

STATE OF WEST BENGAL

December 2, 1969

[M. HIDAYATULLAH, C.J., A. N. GROVER, A. N. RAY AND I. D. DUA, JJ.]

Preventive Detention Act (4 *of* 1950), *s.* 3(2)—*Molestation of individual women and assaults on other individuals—Whether breach of public order—Validity of detention.*

The appellant molested two respectable young ladies threatened their father's life and assaulted two other individuals. He was detained under s. 3(2) of the Preventive Detention Act, 1950 in order to prevent him from acting prejudicially to the maintenance of public order.

On the question of the legality of the detention.

HELD : 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 society. The test is : Does it lead to a disturbance of the even tempo and current of life of the community so as to amount to a disturbance of the public order, or, does it affect merely an individual without affecting the tranquillity of society. [290 H; 291 D]

In the present case, however reprehensible the appellant's conduct might be, it did not add up to the situation where it may be said the community at large was being disturbed. Therefore, it could not be said to amount to an apprehension of breach of public order, and hence, he was entitled to be released. [291 G-H]

Dr. Ram Manohar Lohia v. *State of Bihar*, [1966] 1 S.C.R. 709, relied upon.

Pushkar Mukherjee and Ors. v. *The State of West Bengal*, [1969] 2 S.C.R. 635 and *Shyamal Chakraborty* v. *Commissioner of Police, Calcutta & Anr.* [1970] 1 S.C.R. 762, referred to.

ORIGINAL JURISDICTION : Writ Petition No. 287 of 1969.

Petition under Art. 32 of the Constitution of India for the writ in the nature of *habeas corpus.*

Janendra Lal, for the petitioner.

S. P. Mitra, G. S. Chatterjee for *Sukumar Basu*, for the respondent.

The Judgement of the Court was delivered by

Hidayatullah, C.J. The petitioner Arun Ghosh has been detained by the District Magistrate Malda under s. 3(2) of the Preventive Detention Act. The order was made on June 2, 1969 and he was arrested the following day. The order states that it

A was made to prevent him from acting prejudicially to the maintenance of public order. His representation was rejected by the Advisory Board and also independently by the State Government. We have looked into the case and are satisfied that there was no undue delay at any stage in dealing with the various aspects of his detention as laid down in the Act.

B It is, however, contended that the grounds which were furnished to him on June 3, 1969 do not bear upon the maintenance of public order or of his acting prejudicially to the maintenance of public order. This is the only point urged in support of the petition by the learned counsel. In the affidavit filed in reply the District Magistrate has summarised the grounds as 'anti-social C activities including rioting, assault and undue harassment to respectable young ladies in the public street of Malda town.' The details of these activites are to be found in the grounds and may be summarised as follows :

18-5-1966—Teased one Rekha Rani Barua, and when her father protested confined and assaulted him.

D

29-3-1968—One Deepak Kumar Ray was wrongfully restrained and assaulted with lathis and rods.

1-4-1968—Attempt was made to assault Deepak Kumar Ray at the Malda Sadar Hospital where he was being treated for his injuries in the previous assault.

E

2-9-1968—Threatened one Phanindra C. Das that he would insult his daughter publicly.

26-10-1968—Embraced Uma Das d/o Phanindra C. Das and threw white powder on her face (Criminal case started).

F

7-12-1968—Obscenely teased Smt. Sima Das, sister of Uma Das and beat her with chappals.

18-12-1968—Smt. Sima Das was again teased.

26-1-1969—Threatened the life of Phanindra C. Das.

G 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*(1); *Pushkar Mukherjee and Others* v. *State of West Ben-*H *gal*(2) and *Shyamal Chakraborty* v. *The Commissioner of Police,*

(1) [1966] 1 S.C.R. 709.

(2) [1969]2 S.C.R. 635.

Calcuta and Another(1). 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

(1) [1970] 1 S.C.R. 762.

A 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
B 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
C 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
D 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.

In the present case the acts of the petitioner affected the family of Phanindra C. Das and also two other individuals who were
E 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 throw-
F ing 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.

In the present case all acts of molestation were directed against the family of Phanindra C. Das and were not directed against
G 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(1)

H The result therefore is that however reprehensible the conduct of Arun Ghosh may be, it cannot be said to amount to an

(1) [1966] 1 S.C.R. 709.

apprehension of breach of public order for which alone his detention could be ordered. He is entitled to be released and we order accordingly. He will be released forthwith unless required in some other connection.

V.P.S. *Petition allowed.*