

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2918 of 2025

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Girdhari Yadav Son of Late Dhanesh Yadav @ Late Dhaneshwear Yadav @ Late Dhanesh Prasad Yadav Resident of Village -Udaypura, Police Station -Katoriya, District- Banka At Presently Residing Village- Telangwa (village of Mama), Ps- Katoriya, Dist- Banka

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Dept. of Home (Police), Govt. of Bihar, Patna
2. The Under Secretary Dept. of Home (Police), Govt. of Bihar Patna
3. The District Magistrate, Banka
4. The Superintendent of Police, Banka
5. The Officer-in-charge, Barahat

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate

For the Respondent/s : Mr. Mithilesh Kumar Singh, AC to SC-15

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 11-09-2026

This writ application has been preferred for setting aside the show cause notice as contained in Memo No. 1414 (Legal) dated 26.08.2025 (Annexure '1'), passed by the District Magistrate, Banka in Bihar Crime Control Case No. 14/2025-26. The petitioner has also prayed for setting aside the order vide Memo No. 1532 (Legal) dated 08.09.2025 (Annexure '3') (hereinafter referred to as 'the impugned order') passed by the District Magistrate, Banka. By the impugned order, the District Magistrate, Banka has in exercise of his power under sub-section



(3) of Section 3 of the Bihar Crime Control Act, 2024 (hereinafter referred to as 'the BCC Act') rejected the show-cause/explanation submitted by the petitioner and directed him to mark his attendance every day from 10:00 AM to 5:00 PM in Barahat Police Station.

2. Learned counsel for the petitioner submits that the District Magistrate, Banka has recorded at the end of the order by pen that this order shall be applicable till completion of the election. The submission is that since the assembly election in the State of Bihar was over on 14th November, 2025, the petitioner had to mark his attendance till such time but by virtue of the order dated 11.11.2025, as the impugned order was stayed by this Court, the petitioner suffered the hardship for a period of two months from the date of passing of the impugned order.

3. Learned counsel submits that on a bare perusal of the impugned order (Annexure '3'), it would appear that without there being any material to show that the petitioner was indulging in, or was likely to indulge in, any act to disturb public peace and order, simply on a mere asking by the police authorities, the impugned order has been passed.

4. It is submitted that the petitioner was accused in two cases. The first case, Katoria P.S. Case No. 178 of 2024, was



registered by one Ranjan Kumar due to village politics, and in this case, the petitioner was granted bail by this Court on 19.03.2025 in Criminal Appeal (SJ) No. 187 of 2025. The another case being Katoria P.S. Case No. 165 of 2024 was registered under Section 103 of the Bharatiya Nyaya Sanhita (in short 'BNS'). In the said case, the name of the petitioner transpired in the confessional statement of a co-accused. Petitioner has been granted bail in the said case by this Court in Criminal Miscellaneous No. 9778 of 2025 on 26.03.2025.

5. Learned counsel submits that on a bare perusal of the definition of the cluster of words "anti-social element" as it is provided under Clause (b) of Section 2 of the BCC Act read with Clause (f) and (g) of Section 2, it would appear that the petitioner would not fall in the category of an anti-social element.

6. It is further submitted that sub-section (3) of Section 3 of the BCC Act confers drastic power on the District Magistrate, therefore, such power is to be exercised sparingly with all circumspection and care. In order to exercise the power under sub-section (3) of Section 3, the District Magistrate has to form a subjective satisfaction/opinion that the twin conditions mentioned under Section 3(1)(a) and (b) are duly satisfied. In this case, neither of the two conditions is satisfied. In a very casual manner, the



District Magistrate, Banka, declared the petitioner an anti-social element, causing damage to the reputation of the petitioner and thereafter directed him to mark his attendance in Barahat Police Station, where he was required to stay right from morning 10:00 AM to evening 5:00 PM every day. Thus, for a period of two months, the petitioner was not left in a position to work for his livelihood as he was required to go at least 40 kilometers from one side from his house to attend the police station.

7. It is submitted that as per the Bihar Crime Control Rules, 1978 (hereinafter referred to as 'BCC Rules'), the District Magistrate, while exercising his power under sub-section (3) of Section 3, would be obliged to direct a person to mark his attendance once in a day in the nearest police station but in this case, the District Magistrate ordered that the petitioner shall remain in the Police Station, Barahat, from 10:00 AM to 5:00 PM every day. The petitioner is resident of Katoria Police Station, but he was ordered to go to Barahat Police Station covering a distance of 40 kilometers from one side, thus leaving his house in the early morning and returning home after sunset. This is in complete violation of law and result of an arbitrary exercise of power. Submission is that for such misuse of power by the District Magistrate, which interfered with the fundamental right of the



petitioner under Article 21 of the Constitution of India, besides setting aside the impugned order, expunging the tag of 'anti-social element', the petitioner be awarded appropriate cost and compensation.

8. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Subramanian Swamy vs. Union of India** reported in **(2016) 7 SCC 221** and the **State of Bihar vs. Lal Krishna Advani** reported in **(2003) 8 SCC 361**, learned counsel submits that right to reputation is an integral part of life and personal liberty under Article 21 of the Constitution of India. It is submitted that for infringement of such rights of the petitioner, the State is liable to compensate the petitioner.

9. A counter affidavit has been filed on behalf of the State. It is submitted that the petitioner is an accused in Katoria P.S. Case No. 178 of 2021 and Katoria P.S. Case No. 165 of 2024. In both the cases, charge sheets have been filed, vide Annexure R/A and Annexure R/B to the counter affidavit.

10. It is submitted that the officer-in-charge of the Katoria Police Station received information that the accused-petitioner, after release on bail, again had a meeting with the people of suspicious conduct and he is in touch with them. It was apprehended that they might commit any occurrence in the event of upcoming festivals



and Assembly elections, thereby he can disturb public order, public peace and tranquility. Thus, Sanha was recorded and direction was issued to the concerned officials to keep vigil on them.

11. It is submitted that the Sub-Divisional Police Officer, Telhara, had recommended to take action against the petitioner under Section 3 of the BCC Act and on the basis of the recommendation by SDPO, Telhara, the respondent no. 4 wrote Letter No. 578 dated 13.08.2025 to respondent no. 3 to take further action. It is submitted that on 13.08.2025, i.e. the day on which Sanha was recorded vide Annexure R/C, the officer-in-charge of Katoria Police Station recommended vide Annexure 'R/D' to take action against the petitioner under BCC Act. On the basis of such recommendations, the Crime Control Case No. 14/2025-26 was registered, and notice was issued to the petitioner on 22.08.2025 to appear before the District Magistrate.

12. It is submitted that after giving an opportunity to the petitioner to submit his show cause and upon consideration of the same, the impugned order (Annexure '3') has been passed. It is also submitted that the petitioner has a right to appeal before the Commissioner under Section 6 of the BCC Act within 15 days, but without filing an appeal, the petitioner moved this Court. Thus,



prayer has been made to dismiss the writ application on the ground of alternative remedy.

Consideration

13. This Court has heard learned counsel for the petitioner and the State as also perused the records. On perusal of the records, it appears that the petitioner is accused in two cases mentioned above which are falling under Chapter VI and XVI of the BNS. In both the cases, the petitioner has been granted bail by this Court. On perusal of the order of this Court in Criminal Miscellaneous No. 9778 of 2025 in connection with P.S. Case No. 165 of 2024, it would appear that the name of this petitioner has been brought in this case during investigation of the Katoria P.S. Case No. 178 of 2024, in which one of the accused, namely, Vikash Kumar had given his confessional statement in police custody in which he had taken the name of other persons. This Court finds that none of these two cases pertain to any matter relating to disturbance of public peace and order. The cases are registered under Chapter VI (offences against human body) and XVI (offences against property) of the BNS (after 01.07.2024 when BNS came into force). The petitioner has been chargesheeted in these two cases. The BCC Act, 2024 defines the cluster of words "Anti-social element" under Clause (b) of Section 2 which reads as under:-



“b. "Anti-social element" means a person who

(i) commits, or attempts to commit or abets the commission of any offence punishable under chapter XVI or Chapter XVII of the Indian Penal Code; or

(ii) commits or abets the commission of, any offence connected with trafficking in women and children under the Immoral Traffic (Prevention) Act, 1956; or

(iii) commits or abets the commission of any offence under the Protection of Children from Sexual Offences Act, 2012; or

(iv) by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes; or

(v) has been found passing indecent remarks to, or teasing women or girls; or

(vi) has been declared as a Goonda as per provisions of Bihar Police Manual, 1978; or

(vii) commits or attempts to commit or abets the commission of offence of manufacturing or selling or transporting or transferring or illicit trafficking or converting or repairing or testing or proving any firearm or ammunition, or being member of an organised crime syndicate or any person on its behalf possesses or carries firearm or firearms or ammunition in contravention to the provisions of the Arms Act, 1959.

Explanation—1: For the purpose of this sub-section, “illicit trafficking” means the acquisition, sale, delivery, movement or transfer of firearms and ammunition into, from or within the territory of India, if the firearms and ammunition are not marked in accordance with the provisions of the Arms Act, 1959 or are being trafficked in contravention of the provisions of the said Act including smuggled firearms of foreign make or prohibited arms and prohibited ammunition.

Explanation-2: For the purpose of this sub-section, “organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organized crime.

Explanation-3: “Organized crime” means any continuing unlawful activity by any person, singly or collectively, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person; or



(viii) commits or attempts to commit or abets the commission of any offence in respect of sand, punishable under the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957) or under the Bihar Minerals (Concession and Prevention of Illegal Mining, Transport and Storage) Rules, 2019 or any other law for the time being in force; or

(ix) distills, manufactures, stores, transports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Bihar Excise & Prohibition Act, 2016, Narcotics Drugs and Psychotropic Substances Act, 1985, as amended from time to time or any other law prohibiting such activities for the time being in force, and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing; or

(x) commits or attempts to commit or abets the commission of any offence, punishable under Chapter XI of the Information Technology Act, 2000 (Central Act 21 of 2000); or

(xi) either by himself or as a member of or leader of a gang illegally and unauthorisedly, by use of force or threat or by any other unlawful means, takes possession or attempts to take possession of any land or house or any other property whether belonging to the Government, local authority or any other person.”

Vide Amendment Act 2026, clause (b) has been amended and in place of Chapters XVI and XVII, it is now Chapter VI and XVII.

14. The BCC Act, 2024 talks of Chapter XVI and XVII of the IPC. Clause (b) of Section 2 of the BCC Act is required to be read with clause (f) and (g) which are as under:-

“(f) The phrase “commits an offence” wherever used in relation to an anti-social element in this Act means a person, against whom, during twenty-four months immediately preceding the commencement of any action under this Act, not less than two cases in which police



report has been filed in the Court of law showing his involvement in offences referred to in sub-section (b).

(g) the word “abet” shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code, 1861.”

15. In order to appreciate the requirements of sub-section (3) of Section 3 of the BCC Act, we reproduce Section 3 with its specifications hereunder for ready reference.

“3. Externment, etc. of Anti-social Elements.

(1) Where it appears to the District Magistrate that-

(a) any person is an anti-social element, and

(b) (i) that his movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of [Immoral Traffic in Women and Girls Act, 1956] [Now Immoral Traffic (Prevention) Act, 1956.], or abetment of any such offence; the District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of



his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation, unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation of delay.

(3) The District Magistrate on being satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist, may by order in writing-

(a) direct him to remove himself outside the district or part thereof, as the case may be, by such route, if any, and within such time as may be specified in the order and to resist from entering the district or the specified part thereof, until the expiry of such period, not exceeding six months as may be specified in the order;

(b) (i) require such person to notify his movements or to report himself or to do both, in such manner, at such time and to such authority or person as may be specified in the order;

(ii) prohibit or restrict possession or use by him of any such article as may be specified in the order;

(iii) direct him otherwise to conduct himself in such manner as may be specified in the order; until the expiry of such period, not exceeding six months as may be specified in the order.”

16. Section 8 of the BCC Act says that for purpose of satisfying himself as to whether the condition necessary for the making or confirmation of an order under Section 3 or 5 exists or not take into consideration any evidence which he considers to have



probative value but the provisions of the Evidence Act shall not apply thereto. It is evident that Section 8 of the BCC Act casts a duty upon the District Magistrate to satisfy himself with some tangible material having probative value.

17. The Bihar Control of Crimes Rules, 1978 was published in Bihar Gazette (ex-ord.) dated 30.11.1978 during the period, the Bihar Control of Crimes Ordinance, 1978 was in force. A second Ordinance came in 1981 whereafter Bihar Control of Crimes Act, 1981 came into being w.e.f. 12.08.1981. The second Ordinance was repealed.

18. At this stage, we would also take note of the Rule 6 of the BCC Rules, 1978 hereunder:-

“Rule 6.-While making an order under sub-section (3) of section 3 the District Magistrate may ordinarily require or direct the person affected by the order

(a) to notify his movements to Officer-in-charge of the Police Station (whether in the same district or any other district within or outside Bihar State) nearest to his residence for the time being or to report himself to the said officer at such time and place as may be directed by such officer but not more than once in a day;

(b) to observe the prohibition or restriction about possession or use by him of any Lathi, fire-arm sharp-edged weapon, any intoxicant, liquor, opium, Ganja, Charas or Bhang;



(c) not to be present within a specified distance from any specific educational institution, religious place, Mela, Hat-Bazar, Cinema house or place of public entertainments such as public parks, restaurants and hotels, or around any public office on pay days;

(d) in case the Anti-social element removes himself outside Bihar also to inform the District Magistrate who made the order of his address at fortnightly intervals.”

19. By virtue of Section 27 of the Bihar and Orrisa General Clauses Act, 1917, the Rules of 1978 shall still survive. No rule has been framed so far under BCC Act 2024, as informed to this Court.

20. On a bare reading of the two provisions, it would appear that to bring a case within the ambit of sub-section (3) of Section 3 of the BCC Act, apart from the first condition that the person who should be an “anti-social element”, it is also required to satisfy the second condition mentioned under Clause (b) of sub-section (1) of Section 3. Such satisfaction is to be reached on the basis of some materials having probative value.

21. In the present case, the only material which has been placed before this court is the 'Sanha' entry made by the Inspector of Police-cum-S.H.O. Arvind Kumar Rai in the Station Diary. The



Sanha entry is Annexure ‘R/C’ to the writ application, which we reproduce hereunder:-

0673 / 13 082025	18:15	स्टेशन डायरी आगमन	Brife Description .संक्षिप्त विवरण मैं पु0नि0 सह थानाध्यक्ष अरविंद कुमार राय साथ सशस्त्रबल के वा वाहन से लंबित कांडों के अनुसंधान विधि व्यवस्था संधारण कर आसूचना संकलन कर तथा न्यायालय कार्य से थाना वापस आया डायरी का भार ग्रहण किया उल्लेखनीय हैं कि आसूचना संकलन के क्रम में यह विश्वस्त सूचना प्राप्त हुई कि कटोरिया थाना कांड सं0 165/25 एवं 178/25 के अभियुक्त 01. हिमांशु आनंद उर्फ हिमांशु यादव पिता कामेश्वर यादव सा0 कोल्हुआ भैरोपुर वर्तमान मेहतर गली कटोरिया बाजार 02. निरधारी यादव पिता स्व0 धनेश यादव सा0 उदयपुर वर्तमान सा0 तेलंगवा 03. विकास यादव पिता बसंत यादव 04. निवास यादव पिता कपिलदेव यादव उर्फ बंगाली यादव दोनो सा0 तेलंगवा सभी थाना कटोरिया जिला बांका न्यायालय से जमानत पर मुक्त होने के बाद पुनः इधर उधर बैठक बाजी करते हैं एवं संदिग्ध आचरण के व्यक्तियों का इनके यहां आना जाना हैं ये लोग किसी आगामी त्योहार या चुनाव के अवसर पर कोई द टनाकारित कर लोक व्यवस्था को भंग कर सकते हैं। एवं विधि व्यवस्था एवं लोक शांति भंग कर सकते हैं सूचना का सन्हा दर्ज कर सभी पदाधिकारियों को निर्देश दिया कि गस्ती एवं आसूचना संकलन में उक्त लोगों पर नजर रखें। Duty Officer Name -अरविन्द कुमार राय (उपनिरीक्षक /अवर निरीक्षक) ड्यूटी अधिकारी का नाम Date and Time of 13 / 08 / 2025 10:32 Entry: नोंद की तिथि और समय
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22. On a bare reading of the Sanha Diary entry, it would appear that the police officer, Arvind Kumar Rai, has lodged two Sanhas at an interval of only four minutes, and both the Sanhas are recorded in similar words. The Sanha entry is said to be made based on the information received from some reliable sources, but who are those reliable sources are not known. Who are the persons of suspicious characters with whom the petitioner was holding meeting is not mentioned and on what basis the police officer has



an apprehension that in the coming festival or the election, the petitioner may commit any occurrence which may cause disturbance to the public order. In the Sanha entry, it is stated that all the officers were directed to keep vigil over such people and collect information, but no information has been collected in respect of the petitioner. No mobile call details showing that the petitioner was talking to person of suspicious character was produced before the S.P. or D.M. No particular place where meeting, if any, was held by the petitioner has been mentioned. In the present digital/mobile era, the police could have at least shown the tower location. No verifiable material has been collected by police from which it may be even prima-facie found that the petitioner was acting in a manner prejudicial to the public peace and order as defined under Clause (a) of Section 2 of the BCC Act. 'Sanha' alone has no 'probative value'.

23. While it is true that a police officer is given the responsibility to ensure that there should not be any breach of the public peace and order in the hand of the miscreants, they are expected to proceed against a person under the BCC Act only after collecting reliable materials after due verification which may have some probative value. A mere suspicion without any reference to the name of any person who is of suspicious character, without referring to a single meeting with date and venue at which such



meeting was held, a mere bald statement and suspicion expressed by a police officer in the Sanha that a person is likely to commit an occurrence and breach the public peace and order cannot form basis of forming an opinion that the movement of such person is likely to cause breach of peace and public order. This kind of unbridled and uncanalised power cannot be exercised by police.

24. The condition prescribed under sub-clause (i) of Clause (b) under sub-section (1) of Clause 3 requires some materials showing that the said person's movements or acts in the district or any part thereof are causing or are calculated to cause alarm, danger, or harm to persons or property. No such movement or act of this petitioner has been mentioned in the Sanha entry. In the opinion of this Court, where a drastic power such as conferred in sub-section (3) of Section 3 of the BCC Act is to be exercised by the District Magistrate, a mere 'Sanha entry' based on a bald statement of a police officer without there being any reliable material would not inspire confidence of this Court. An executive order interfering with the fundamental right of a person cannot be exercised in such unbridled and uncanalized form of discretion on the part of the police officer. It is required to be noticed that the petitioner was granted bail by this Court on 26.03.2025. For a period of almost five months, no act or omission on the part of the



petitioner has been noticed by the police officer. The police officer did not file any application for cancellation of bail of the petitioner on any ground whatsoever.

25. In such circumstance, this Court is of the considered opinion that the condition under Clause (b) of sub-section (1) of Section 3 read with Section 5 of the BCC Act are not satisfied in this case. The District Magistrate, Banka could not have exercised his power under sub-section (3) of Section 3 of the BCC Act.

26. Having said so, this Court further finds that under Rule '6' of the BCC Rules, the District Magistrate could have directed the petitioner at best to mark his attendance once in a day in the nearest police station from his residence, but he did not follow the rules. He directed the petitioner to not only mark his attendance in a police station at a distance of 40 kilometers from his house, but also to remain present in the police station from 10:00 AM to 5:00 PM every day. This action of the District Magistrate is in breach of the rules, which has further resulted in causing hardship to the petitioner. He was rendered unemployed during this period.

27. At this stage, this Court would place on record the judgment of the Hon'ble Supreme Court in the case of **Arjun vs. The State of Maharashtra and Ors.** reported in **2024 INSC 968**,



wherein the appellant before the Hon'ble Supreme Court was sought to be proceeded under Section 3(2) of the The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981. The appellant was detained for a period of twelve months so as to prevent him from indulging in the activities of bootlegging thereby preventing the maintenance of peace. For this purpose, the detaining authority had basically relied on the six cases registered against the said appellant by the State Excise Department. The Hon'ble Supreme Court took note of the six cases pending against the appellant alleging illicit manufacture of handmade liquor, these cases were registered during the period 29th January 2023 to 18th October 2023, but in none of these cases, the authorities had found it necessary to arrest the appellant. The Hon'ble Supreme Court relied upon the observations of Hon'ble Justice Hidayatullah, J. (as His Lordship then was) in the case of **Ram Manohar Lohia vs. State of Bihar and Another** reported in (1966) 1 SCR 709 and also in the case of **Ameena Begum vs. State of Telangana and Others** reported in (2023) 9 SCC 587. Paragraph '12', '13' and '14', of the judgment rendered in the case of **Arjun** (*supra*) are being reproduced as under:-



“12. The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of **Ram Manohar Lohia v. State of Bihar and Another**¹:

“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

1. (1966) 1 SCR 709 : 1965 INSC 175



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.”

13. It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

14. Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by this Court in the case of **Ram Manohar Lohia** (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of **Ameena Begum v. State of Telangana and Others**².

“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon’ble M. Hidayatullah, C.J. in *Arun Ghosh v. State of W.B.* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)

“3. ... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

2. (2023) 9 SCC 587



39. In Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67], the petitioning detenu was detained by an order of a District Magistrate 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 (read : the offending act) “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. (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)”

40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3)

“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.”

41. In Kuso Sah v. State of Bihar [Kuso Sah v. State of Bihar, (1974) 1 SCC 185 : 1974 SCC (Cri) 84], Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6)

“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. ...

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.”

28. On a bare perusal of the aforementioned judgments of the Hon'ble Supreme Court, it would be evident that for an act to qualify as a disturbance to public order, the specific activity must have an impact on a broader community or general public, invoking feelings of fear, panic or insecurity. No such act or deed of the petitioner has been pointed out in the show cause notice.



29. The views of the Hon'ble Constitution Bench of the Supreme Court that every breach of peace does not lead to public disorder is to be understood in its terms and spirit. The Hon'ble Supreme Court has been pleased to hold that when a person can be dealt in exercise of power to maintain the law and order, unless the acts of the proposed detainees are the ones which have the tendency of disturbing the public order, a resort to preventive detention, which is a hardship measure, would not be permissible. The same reasoning and rationale is to be applied while exercising the power under sub-section (3) of Section 3 of the BCC Act. Drastic powers are to be exercised with circumspection and care. Reference in this regard be made to the judgment of the Hon'ble Supreme Court in the case of **Kuso Sah vs. The State of Bihar** reported in **(1974) 1 SCC 195** in which, speaking for the Bench, the then Hon'ble Mr. Justice Y.V. Chandrachud 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. ***

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. ***”



30. In result, we are of the considered opinion that the impugned order of externment of the petitioner in the manner ordered by the District Magistrate, Nalanda would not sustain the test of law. It is hereby set aside.

31. We find that the fundamental right of the petitioner embodied under Article 21 of the Constitution has been infringed without following the established procedure of law. Therefore, we award a compensation of Rs. 1,00,000/- (Rupees One Lakh) to the petitioner together with a cost of Rs. 10,000/- (Rupees Ten Thousand) which will be payable by the State within a period of one month from today. The cost and compensation shall be realised from the erring officials in the light of the judgment of this court in the case of **K.K. Pathak @ Keshav Kumar Pathak vs. Ravi Shankar Prasad & Other** reported in **(2019) 1 PLJR 1051** wherein it has been held that whenever the State is saddled with cost and compensation for the misuse of power by an executive of the State, it is required to be recovered from the erring officials.

32. This Court, therefore, directs the State Government to realise the cost and compensation amount payable to the petitioner from the erring officials within a period of six months in accordance with law.



33. In result, this criminal writ application succeeds. The impugned order dated 08.09.2025 (Annexure ‘3’) passed by the District Magistrate, Banka, is hereby set aside.

34. The criminal writ application, thus, stands allowed.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rishi/-

AFR/NAFR	
CAV DATE	13.07.2026
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Transmission Date	

