
(1991) 06 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2141 of 1991

Antaryami ' Antua Sahu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-06-1991

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (1992) 73 CLT 59 : (1992) CriLJ 1910 : (1992) 1 OLR 91

Hon'ble Judges : B.L. Hansaria, C.J.;S.K. Mohanty, J

Bench : Division Bench

Advocate : G.N. Mohapatra, for the Appellant; R.K. Patra, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner has been detained with the aid of Section 3(2) of the National Security Act, 1980 to prevent him from acting in any manner prejudicial to the maintenance of public order. The detention order was passed on 10-1-1991 and is based OR the following solitary incident;

"You along with your associate Chagala came in a scooter on 8-1-1991 around 9-15 P.M. and attacked one Rajendra Kumar Behera of Madhupatna with sword and Bhujali on the National Highway in front of Samrat Cinema Hall and your associate snatched away the bag containing a cash of Rs. 10,525/- from him. When the victim resisted and shouted aloud, you brandished the sword, abused him and threatened with dire consequences. You and your associate Chagala brandished sword and Bhujali on the National Highway and created a situation of terror and panic. Out of consternation, the victim was running away to save his life. At that point of time you and your associate chased him and threatened to kill by sword and Bhujali anybody who would come forward to help him. The violent activities, utterances and fearful gestures of yours and your associate created a dreadful scene there. The people on the National Highway ran hither and thither to save their lives. The shop-keepers on either side of the National

Highway closed down their shops out of panic. The traffic on the National Highway came to a halt. By your violent and anti-social act you jeopardised public peace, order and tranquillity of the locality. No one ventured to offer resistance as your act created a feeling of terror that anybody present can be the target of your attack. This incident relates to Madhupatna P.S. Case No. 11 dated 8-1-1991 u/s 392, IPC."

2. The validity of the impugned order has been assailed on the following grounds;

(1) The allegation made against the petitioner makes out a case, at best of breach of law and order and not public order;

(2) there is no material that the petitioner has tendency to repeat the act in question because of which his detention was called for ;

(3) the detaining authority had not applied its mind about the invocation of the ordinary law of the land by way of prosecuting the petitioner to be sufficient to meet the exigency of the situation ; and

(4) the detaining authority had not informed the petitioner that he had right to represent to the State Government, the Central Government and the Advisory Board.

3. We may examine the aforesaid, submissions made by Shri Mohapatra seriatim. As to the first contention, it may be stated that the distinction between "law and order" and "public order" had come up for determination before the Apex Court in a number of cases. On the decided cases, it may be stated 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. As stated in *Kuso Shah v. State of Bihar* AIR 1974 SC 166, infractions of law are bound in some measure to lead to disorder, but every infraction of law does not necessarily result in public disorder. As observed in *Commissioner of Wealth Tax, Calcutta Vs. Tungabadra Industries Ltd., Calcutta*, , a line of demarcation must be drawn between serious and aggravated forms of disorder which directly affect the community or injure the public interest and relatively minor breaches of peace of purely local significance which primarily injure specific individuals and only in a secondary sense public interest. In *Ram Ranjan Chatterjee v. State of West Bengal* AIR 1976 SC 609, it was reiterated that if the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of public, it would raise a problem of law and order only.

4. The aforesaid decisions and some others were noted by a Bench of this Court in *Pabitra Kumar Sahoo Vs. State of Orissa and Others*, , and it was held that a solitary act which ordinarily would be a case of disturbance of law and order might, in a different situation and circumstance cause different reaction and disturb public tranquillity and the even tempo of the life of the community. When communal tension is high an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention in

such a situation has to take note of the potentiality of the act objected to. On the facts of that case, it was held that the demand by the detenu of "Deda Chanda" and forcible removal of a T.V. set from the possession of the affected person by show of force was confined to one individual which did not affect the members of the public at large. This decision was cited with approval in *Ganesh Khuntia v. District Magistrate* 66 (1988) CLT 344.

5. Shri Mohapatra has also referred to *Sarat Chandra Naik v. State of Orissa* (O. J. C. No. 3306 of 1937) disposed of on 27-1-1988) where in also the allegations were more or less of similar nature as have been alleged in the present case. This Court set aside the impugned order being of the view that the activity of the detenu had affected law and order only, and not public order.

6. As against the aforesaid decisions relied on by Shri Mohapatra, the learned Government Advocate referred to *Tukuna alias Satyajit Panda Vs. State of Orissa and Others*, , and *Anua alias Sarat Chandra Singh v. State of Orissa* 1987 (II) OLR 370. On the facts of those cases, it was held by this Court that the occurrences in question affected public order. We do not propose to deal in detail with those cases. Suffice it to say that this Court was satisfied that the occurrences in question affected the even tempo of the life of the community at large. In the first of these cases, the demand was of subscription from shop keepers on refusal to pay which they were threatened with dire consequences and the detenu and his associates were hurting knives and giving threats to persons on the public road. The occurrence was thus not confined to one individual, but it affected the public at large. In the other case also, a shop-keeper was chased on a public thoroughfare by brandishing a sword and then the intervenors were threatened with dire consequences which created terror in the mind of the public at large which became panic-stricken. The result of the terror was manifested by the closing of the shops and houses by the inhabitants for safety and creation of panic in the whole locality. These acts were regarded to have disturbed public order. It is urged by the learned Government Advocate that the facts of the instant case are similar to those which had been faced by this Court in *Anua* and because of what has been held in that decision, we should also regard the activity of the present petitioner to have affected public order, and not merely law and order.

7. We have duly considered the aforesaid decisions in which somewhat conflicting stands were taken. Question is what view we should take. Seized as we are with a matter relating to personal liberty, we are of the opinion that the provisions of the preventive detention law, which is a hard law, should be strictly construed. This is because of the fact that the Courts have always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention regardless of the social cost involved in the release of a possible renegade, as observed by Bhagwati, J., as he then was, in *Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others*, . It has been further pointed out in this decision that this is an area where the Court has been most strict and

scrupulous in ensuring, observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention. Along with this, we may note what was stated by Chinappa Reddy, J. in his concurring judgment in *Vijay Narain Singh Vs. State of Bihar and Others*, . This is what the learned Judge observed ;

"I do not agree with the view that those who are responsible for the national security or for the maintenance of public order must be the sole fudges of what national security or public order requires. It is too perilous a proposition. Our Constitution does not give a carte blane to any organ of the State to be the sole arbiter in such matter."

8. To this enunciation of law, we would add that if two views in the matter be reasonably possible, one favouring the detenu should be taken as after all a person stands to lose his liberty without having the opportunity to establish his innocence which benefit would have been available had he been prosecuted in a Court for the offending act(s). We have further informed ourselves about the recent thinking of the Apex Court as to when an incident can be regarded to have affected public order. In this connection, the following observations finding place in paragraph 11 of *Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others*, illustrating as to when a simple law and order situation might assume the gravity and mischief of a public order problem are pertinent:

"As for example, dare devil repeated criminal acts, open shoot out, throwing bomb at public places, committing serious offences in public transport, armed persons going on plundering public properties or terrorising people may create a sense of insecurity in the public mind and may have an impact on "public order".

Even certain murder committed by persons in lonely places with the definite object of promoting the cause of the party to which they belong may also affect the maintenance of "public order".

9. Keeping in view what has been stated above and the need to strictly construe the law and the permissibility to judge the matter ourselves irrespective of the view taken by the detaining authority and the demand of law to adopt a view favourable to the detenu, if the same be reasonably possible, we would hold that the present was a case where the alleged activity of the datenu affected law and order only, and not public order, as after ail what had happened was that the detenu had directed his attack against one individual and though some public scene was created, the same really did not affect the even tempo of the life of the community, as by the time the occurrence had taken place it was already 9. 15 P. M. of the month of January by which time there would not have been many people on the road and the shop-keepers must have bean even, otherwise closing their shops. The public at large were thus not much affected. In any case, the panic created was momentary and in the next day morning everything was normal.

10. We would, therefore, accept the first submission of Shri Mohapatra. As this ground is sufficient by itself to set aside the order of detention, it is, strictly speaking, not necessary to traverse the other grounds; but for the sake of completeness, we would express our views on the other submissions of the learned counsel also as the same may help the detaining authorities to understand the law better and may, therefore, advance the general cause of justice.

11. The second submission advanced by Shri Mohapatra is that there being no material to suggest that the petitioner had tendency to " repeat his act, the detention was not called for. Learned counsel urges that the allegation against the petitioner being confined to a solitary act and there being nothing to indicate about the conduct of the petitioner anterior to 8-1-1991, the materials on record do not justify invocation of the preventive detention law which is used not to punish a person for his past misconduct but to prevent him from indulging in acts of similar nature in future.

12. The law on the subject is also well-settled by now. It was observed in *Ramveer Jatav Vs. State of U.P. and Others*, , that it cannot be laid down as a bald proposition that one ground can never be sufficient for founding the satisfaction of the detaining authority for detaining a person. There ere cases where one ground may be regarded as sufficient if the activity alleged is of such nature that the detaining authority could reasonably inter that the detenu must be habitually engaged in such activity or there may be other circumstances set out in the grounds of detention from which the detaining authority could reasonably be satisfied even on the basis of one ground that the detenu might indulge in such activities in future unless he is detained. If the solitary act be like dacoity in a running train or a bus, the same may naturally raise an apprehension because of the nature of the act, which needs large preparation and the greed to get enriched illegally, that the person concerned is likely to repeat the same. In *Ramveer*, however, though the detenu had committed murder in broad daylight by using a fire-arm, the same was not regarded as sufficient to detain the person as materials were lacking to show if the detenu was likely to do such act in future if left free. The nature of the act attributed to the petitioner, however, shows his criminal propensity and the likelihood to repeat the act, as one indulging in enriching himself by force is likely to do so again and again. We would, therefore, reject the second submission of Shri Mohapatra also.

13. The third submission is that the detaining authority did not apply its mind to the question of launching of the prosecution against the petitioner for the alleged act in question. The law on the subject is that the ordinary criminal process is not to be circumvented or short-circuited by ready resort to preventive detention. The possibility of launching a criminal prosecution is, however, not an absolute bar to preventive detention. The law on the subject was examined in detail in *Jyoti Prasad Baruah Vs. State of Assam and Others*, , wherein the following

propositions were set out in this regard;

- (a) Possibility of prosecution is not a total bar.
- (b) Ordinary law should not, however, be normally supplanted.
- (c) The question of possibility of prosecution has to be borne in mind.
- (d) Non-application of mind to the above aspect will not, however, render an order bad in all cases.
- (e) In some cases (of professional bully, international smuggling etc.) the silence about consideration of this aspect may not matter.
- (f) If allegation of non-application of mind is specifically made qua this facet, the authority has to satisfy that this question too was borne in mind.

In this connection, learned Government Advocate has, however, referred to State of Punjab Vs. Sukhpal Singh, wherein it is stated that though the possibility of prosecution being launched is not an irrelevant consideration, failure to consider such possibility would not vitiate the detention order. It was further observed that unless it clearly appeared that preventive detention was being resorted to as the line of least resistance where criminal prosecution would be the usual course, no fault could be found with the order of detention.

14. Shri Mohapatra urges that the facts of the present case would show that recourse to preventive detention had been taken as the line of least resistance inasmuch as the occurrence was of 8-1-1991 whereas the order of detention was passed on 10-1-1991, before which even a case u/s 392, IPC, had been registered against the petitioner. This shows that the detaining authority did not await to see the course of the normal prosecution of the petitioner was likely to take. What has been stated in this regard in the counter affidavit filed on behalf of the detaining authority is that the normal law of the land was not sufficient to curb down the anti-social activities of the petitioner. It is not clear from this averment as to why the detaining authority had taken the view which he had done. From the materials placed before us, we are not satisfied if the detaining authority had really examined the question as to whether prosecuting the petitioner would have yielded the desired result. We would, therefore, accept the third submission also of Shri Mohapatra.

15. On the fourth-ground of attack, the submission is that the petitioner, who is illiterate, was not made aware of his right to file representation before the State Government, the Central Government, and the Advisory Board, because or which no such representation was in fact filed by him before these authorities. In this connection, reference is made to paragraph 18 of Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, wherein the need of apprising the detent about his right to make representation and also relating to his right of being heard before the Advisory Board was noted. As to this, the stand of the opposite parties is that in the grounds of detention it was clearly stated that the petitioner

could file representation against the order of detention to the State Government, This apart, vide letter dated, 4-2-1991 the petitioner was intimated to give his willingness about, personal hearing before the Advisory Board. He was also informed about the sitting of the Advisory Board. Sheri Mohapatra, however, submits that these communications which are in English were not explained to the petitioner. We, however, find that an Oriya translation of the grounds of detention had also been furnished to the petitioner. This apart, we find an endorsement in the grounds of detention, that the same were explained to the petitioner in Oriya.

16. It is then urged by Shri Mohapatra that the communication about personal hearing before the Advisory Board is dated 4-2-1991, whereas the order of detention was passed on 10-1-1991, which shows that the communication was a belated one. As the Advisory Board had not taken up the case of the petitioner by the time the communication of 4-2-1991 was addressed to him, we are of the view that the little delay in informing the petitioner about his right to appear before the Advisory Board had not caused any infraction of the right conferred by Article 22(5) of the Constitution. The decision in the case of Puran Singh Vs. Union of India and Others, , on which reliance has been placed by Sheri Mohapatra in this connection, was one where the detent was not at all made known about his right to make representation. That decision cannot, therefore, assist the petitioner. So, we reject the last contention of Sheri Mohapatra.

17. The result of the foregoing discussion is that we accept the first and the third submissions advanced by Sheri Mohapatra and reject the remaining two. The consequence of acceptance of the two submissions is that the order of detention cannot be upheld. The same is, therefore, set aside. The petition is allowed accordingly. The petitioner be set at liberty forthwith if his detention is not required in connection with any other case.

18. The delay in delivery of judgment has occurred because after the hearing of the case was over on 16-5-1991, the Court closed for summer vacation on and from 18-5-1991 whereafter it has reopened today.

S.K. Mohanty, J.

19. I agree.