
(2004) 07 OHC CK 0044

In the Orissa High Court

Case No : Writ Petition Criminal No. 1 of 2004

Babu alias Iswar Rout

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 201, 294, 302, 323, 334

Citation : (2004) CLT 897 (Suppl CrI) : (2004) 29 OCR 26 : (2004) 2 OLR 344

Hon'ble Judges : Sujit Barman Roy, C.J; L. Mohapatra, J

Bench : Division Bench

Advocate : Pitambar Acharya, S.R. Pati and P. Sinha, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The order of detention dated 12.11.2003 passed by District Magistrate Cuttack under Sub-section (2) of Section 3 of the National Security Act, 1980 against the petitioner is under challenge before this Court.

2. On perusal of the records it appears that the District Magistrate, Cuttack passed an order of detention on 12.11.2003 to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. The said order in Annexure-1 is quoted below:

WHEREAS, I Sri Deoranjana Kumar Singh, I.A.S., District Magistrate, Cuttack, have been empowered in Government of Orissa, Home Department Order No. 5478/C dated 22.09.2003 to exercise the powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980.

AND WHEREAS, I am aware that Sri Babu alias Iswar Rout, aged about 25 years, son of Ganeswar Rout of Shankarpur, P.S. Madhupatna in the district of Cuttack is presently lodged in the Circle Jail, Cuttack at Choudwar being arrested and forwarded on 21.10.2003 in connection with Madhupatna P.S. Case No. 258/2003

and remanded in Madhupatna P.S. Cases No. 282/2003, No. 283/2003 and No. 290/2003. In Madhupatna P.S. Case No. 258/2003, he has granted bail by the Court of the S.D.J.M., Sadar, Cuttack on 3.11.2003, but he has not furnished bail bond so far. In the meanwhile, the Court of S.D.J.M., Sadar, Cuttack has called for the C. Ds. on 12.11.2003 in Madhupatna P.S. Cases No. 282/2003 and 283/2003. There is every likelihood that he may be released on bail. Even if his bail is rejected in the Lower Court, there is every possibility that he may be released on bail from the Higher Courts. There are many precedents of such bails. Once enlarged on bail, there is every likelihood of him indulging in activities prejudicial to the maintenance of public order.

AND WHEREAS, I am subjectively satisfied, after due application of mind on the materials placed before me, that with a view to preventing Sri Babu alias Iswar Rout, son of Ganeswar Rout of Shankarpur, P.S. Madhupatna in the district of Cuttack from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following orders.

Now therefore, in exercise of the powers conferred upon me by Sub-section (2) of Section 3 of the National Security Act, 1890, I do hereby direct that the said Sri Babu alias Iswar Rout, son of Ganeswar Rout of Shankarpur, P.S. Madhupatna in the district of Cuttack be detained in the Circle Jail, Cuttack at Choudwar until further orders.

In the grounds of detention served on the petitioner several instances of his involvement in criminal activities have been cited. Para-7 of the grounds of detention runs as follows:

Besides the above stated four cases, you are also involved in the following case, as reported by the Superintendent of Police, Cuttack.

- (i) Madupatna P.S. Case No. 221/1997/Under Section 386/34 Indian Penal Code
- (ii) Madhupatna P.S. Case No. 224/1997, u/s 302/34 Indian Penal Code
- (iii) Madupatna P.S. Case No. 116/1999, u/s 302/201 Indian Penal Code
- (iv) Madupatna P.S. Case No. 92/2000, u/s 302/34 Indian Penal Code
- (v) Madupatna P.S. Case No. 403/2001, u/s 385 Indian Penal Code
- (vi) Madhupatna P.S. Case No. 102/2002, u/s 341/323/294/506/34 Indian Penal Code

It further appears that the Advisory Board confirmed the order of detention and the State Government in Annexure-2 has also confirmed the order of detention.

3. Learned Counsel appearing for the petitioner submitted that out of six cases mentioned para 7 of the grounds of detention the petitioner has been acquitted in three cases registered for commission of offences u/s 302 read with other provisions of the Indian Penal Code and had the said fact been brought to the notice of the detaining authority, decision of the detaining authority would have

been otherwise. A copy of one such acquittal order has been filed along with the petition in Annexure-4 and in course of hearing the learned Counsel produced copies of two more judgments passed in two different sessions cases.

4. Two separate counter-affidavits have been filed. The opposite party No. 1. State Government has filed a counter supporting the detention order and the opposite party No. 2 has also filed a counter supporting the detention order. In the counter affidavit filed by the detaining authority it is stated in para-5 that the Superintendent of Police, Cuttack (opposite party No. 3) submitted a report stating therein the antisocial activities of the petitioner which are considered prejudicial to the maintenance of public order in the locality. It is further stated in the counter-affidavit that the detaining authority evaluated the material and documents on record and on being prima facie satisfied about the existence of sufficient grounds for passing an order of detention under Act, exercised his power u/s 3(2) of the National Security Act, 1980.

5. Sole ground on which the learned Counsel for the petitioner challenges the detention order is that the petitioner was acquitted in three of the cases as mentioned in para-7 of the grounds of detention and the said fact was not brought to the notice of the detaining authority. Reliance is placed by the learned Counsel for the petitioner on two decisions of the Apex Court in the case of Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, and in the case of Ramesh Vs. State of Gujarat and Others, . In the case of Dharamdas Shamlal Agarwal v. The Police Commissioner and Anr. (supra) the detenu was involved in five cases out of which he had been acquitted in two. The fact of acquittal of the detenu in the aforesaid two cases had not been brought to the notice of the detaining authority. In the above circumstances, the Apex Court held that the satisfaction of the detaining authority is vitiated. Similar is the view taken by the Apex Court in the case of Ramesh v. State of Gujarat and Ors. (supra). This Court also in the case of Md. Abdul Zahur Vs. State of Orissa and Others, reiterated exactly the same view. Relying on the aforesaid three decisions, this Court in the case of Bapu alias Jyoti kanta Parida v. State of Orissa an Ors., reported in (2004) 28 OCR 602 held as follows:

On the basis of the aforesaid factual position, learned Counsel for the petitioner submits that the impugned order cannot be sustained and must be quashed. To buttress his aforesaid contention, learned Counsel for the Petitioner cited a decision of the Apex Court in Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another, . It has been, inter alia, held by the Apex Court in the aforesaid decision that the requisite subjective satisfaction of the detaining authority, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. Where at the time the detaining

authority passed the detention order the vital fact, namely, the acquittals of the detenu in two of the cases shown in the table appended to the grounds of detention had not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the trial of those cases was pending the non-placing of the material fact, namely the acquittal of detenu in the above said two cases resulting in non-application of mind of the detaining authority to the said fact vitiated the requisite subjective satisfaction, rendering the detention order invalid.

There being nothing on record to show that the fact of acquittal of petitioner in three of the cases out of six mentioned in para-7 of grounds of detention was brought to the notice of the detaining authority, applying the principles laid down by the Apex Court as well as this Court in the above cases, we hold that the satisfaction of the detaining authority in absence of such fact has vitiated the detention order.

6. In the circumstances and in view of the settled law as indicated above, we have no option except allow the writ petition and quash the impugned order in Annexure-1 detaining the petitioner u/s 3(2) of the National Security Act, 1980. We further direct that the petitioner be set at liberty forthwith if he is not required in any other cases.

Sujit Barman Roy, C.J.

7. I agree.