
(2009) 01 OHC CK 0017
In the Orissa High Court

Bijaya Kumar Swain ' Bhanj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 3, 5A
Penal Code, 1860 (IPC) — Section 294, 307, 323, 34, 341

Citation : (2009) 107 CLT 690 : (2009) 1 OLR 146 Supp

Hon'ble Judges : Sanju Panda, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—The order of detention dated 26.2.2008 passed by the District Magistrate-cum-Collector, Puri, Opposite Party No. 3, u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as "the Act") is under challenge in this habeas corpus petition filed by the Petitioner under Article 226 of the Constitution of India.

2. Brief facts giving rise to this habeas corpus petition are that after Opposite Party No. 3-District Magistrate-cum-Collector, Puri passed the order of detention dated 26.2.2008 of the Act against the Petitioner, the State Government vide Order Dated 18.4.2008 confirmed the same for a period of 12 months from the date of detention in the district jail until further orders. The Petitioner was inside the jail custody when the aforesaid order was passed as he was arrayed as an accused in connection with Puri Town PS. Case No. 47/2008 dated 4.2.2008 under Sections 341/323/294/379/34 IPC. Another case was also registered against the Petitioner on the same day, i.e. Puri Town PS. Case No. 48/2008 under Sections 432/341/323/294/506/34 IPC. The Petitioner surrendered before the Learned S.D.J.M., Puri on 15.2.2008 and was released on bail on 16.2.2008. However, before the Petitioner was released from the custody, it was intimated to the Learned S.D.J.M. that another case being Kumbharapada P.S. Case No. 27 of

2008 had been registered under Sections 341/363/307/294/34 IPC. Therefore, the Petitioner was remanded to jail custody in spite of the bail granted on 16.2.2008. Thereafter the Petitioner filed an application for bail before the Sessions Court, Puri which was registered as Bail Application No. 121 of 2008. During pendency of the said application, the impugned order of detention was passed against the Petitioner.

3. The order of detention together with the ground of detention was served on the Petitioner on 1.3.2008 as per Annexure-2 to the Writ Petition. The detention order was passed on the grounds that on 4.2.2008 at about 5.30 P.M. the Petitioner created disturbance in public road by terrorizing the local people with deadly weapons like hockey stick, iron pipe, etc. On the same day at about 7 P.M. also Petitioner mercilessly assaulted one Rakesh Kumar Mohanty and terrorized the innocent general public who were moving on the road by chasing them to attack. Petitioner ordered in a commanding voice to close down the shops immediately and tried to damage the nearby shops. Petitioner also openly declared that the area would be reined over by him. He also gave open threat not to report before the police or else they would face with dire consequences and due to such activities the inhabitants of the locality fled away from the spot. The Petitioner also resorted to nefarious activities like robbery, extortion, arson, kidnapping, brutal assault on innocent general public, illegal possession and use of contraband firearms during commission of crime, criminal intimidation and wrongful restraint, collection of "Dada Bati", etc. The Petitioner is a die-hard antisocial and leading a group of antisocial and involved in all sorts of heinous crime in the area. He along with his criminal associates commits the offences in well-planned manner by terrorizing and mercilessly assaulting local inhabitants and local shopkeepers for collection of "Dada Bati" by using different deadly and illicit weapons like sword, bhujali, revolver, etc.

4. Apart from the above, Puri Town P.S. Case No. 48 of 2008 "disclosed the criminal and antisocial activities of the Petitioner which were very detrimental to the maintenance of public order and tranquility in the area. On the same day i.e. 4.2.2008 at about 7 p.m. the Petitioner along with others also assaulted one Rakesh Kumar Mohanty, who is running his timber business near Ramji Muth of Bali Sahi, by dragging him out of the timber depot and assaulting him on his hands and legs by means of cricket stump and wooden plank. Thereafter, he assaulted him severely by violent kicks and fist blows terrorizing the innocent general public of the locality who were moving on the road and threatened not to report before the police or else to face with dire consequences. The Petitioner made representation to the State Government on 19.3.2008 and the same was rejected by the State Government on 2.4.2008. Thereafter, the Petitioner made representation to the Central Government and vide letter dated 21.4.2008 it was intimated to the Petitioner that his representation had been rejected by the Government of India.

5. The Learned Counsel for the Petitioner submitted that while passing the

detention order, Opposite Party No. 3 did not record his satisfaction that the said order was passed with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order and tranquility. The grounds of detention show that in order to prevent the Petitioner from committing any crime the detention order was passed. Thus, the order of detention was not in accordance with the requirements of Section 3(2) of the Act and the cause of action for detaining the Petitioner relates to two incidents which took place on 4.2.2008 and as all the alleged offences were under the IPC and some of them were bailable in nature and bail was granted by the competent Court of law. But the Petitioner could not be enlarged on bail in spite of the order and subsequently it was noticed that another case was pending against him where he was arrayed as an accused person. While in custody, he moved an application for bail before the Sessions Court and the detention order was passed on 26.2.2008. The fact relating to Puri Town P.S. Case No. 48 of 2008 (ground No. 11) as narrated in the grounds of detention is that when the local people rushed to the spot the Petitioner had left the place. Therefore, the satisfaction recorded by the authority for passing the order of detention is self-contradictory while at one place it was stated that the Petitioner chased the local people creating public order situation, at another place it was stated that when public rushed to the spot the Petitioner had left the place. As such, the detention order is without application of mind and jurisdiction. Though the detaining authority stated in the grounds of detention that they enclosed the copy of the papers, they did not supply the statement recorded u/s 161 Cr.P.C. in Kumbharapada P.S. Case No. 27 of 2008 and 48 of 2008. From the list of cases supplied in the grounds of detention, it appears that some cases were already closed and some other cases had ended in acquittal. As all the papers were not supplied to the Petitioner, he was not able to make proper representation and hence the detention order is liable to be quashed. In support of his contention, the Learned Counsel for the Petitioner cited an unreported decision of this Court passed in W.P. (Crl.) No. 279 of 2008 disposed of on 30.9.2008. The further contention of the Learned Counsel for the Petitioner is that while the detention order was passed on 26.2.2008 the Petitioner was already inside the custody and hence the ground of detention could not have been served on the Petitioner on 1.3.2008 and detention in custody is bad in law. In support of this contention, he cited decisions of the Supreme Court in the case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, , Vijay Narain Singh Vs. State of Bihar and Others, and Biram Chand Vs. State of Uttar Pradesh and Others, wherein it was held that the detaining authority cannot take recourse to two parallel and simultaneous proceedings nor can take recourse to a ground which is the subject-matter of a criminal trial.

6. The Learned Addl. Government Advocate, while refuting the submissions of Learned Counsel for the Petitioner, submitted that the Apex Court in the case of Merugu Satyanarayana Vs. State of Andhra Pradesh and Others, considering the subjective satisfaction of the detaining authority held as follows:

where a preventive order may have to be made against a person already confined to jailor detained the detaining authority must show awareness that the person sought to be detained is already in jailor under detention and yet a preventive detention order is a compelling necessity. This awareness would show that such a person is not a free person to indulge into a prejudicial activity which is required to be prevented by detention order and this awareness must find its place either in the detention order or in the affidavit justifying the detention order when challenged. If the subjective satisfaction is reached without the awareness of this very relevant fact the detention order is likely to be vitiated. But it will depend on the facts and circumstances of each case.

7. In the present case the detaining authority was already aware that the Petitioner was in jail and that the preventive detention order was a compelling necessity and activities of the Petitioner were required to be prevented by detention order. Therefore, there was no illegality in passing the detention order. He also cited decisions of the Apex Court in the case of Ibrahim Nazeer Vs. State of Tamil Nadu and Another, , J. Abdul Hakeem Vs. State of Tamil Nadu and Others, , The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Others Vs. Sangala Kondamma, and State of U.P. and Anr. v. Sanjai Pratap Gupta " Pappu and Ors. 2004 (7) Supreme 24.

8. In the case of Ibrahim Nazeer Vs. State of Tamil Nadu and Another, the Apex Court has held that the only requirement is that the detaining authority should be aware that the detenu is already in custody and is likelihood to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with.

9. In the case of J. Abdul Hakeem Vs. State of Tamil Nadu and Others, , while considering the plea of detenu that all the documents referred to in the detention order were not supplied to him, the Apex Court has held that the detenu has a right to be supplied with the material documents on which reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is not relied upon by the detaining authority for forming of its opinion or was made the basis for passing the order of detention. The duty and obligation is cast on the detaining authority to supply the copies of those documents in the language known to the detenu; having said, the Court put a rider; but it is not that non-supply of copies of the documents has impaired the detenu's right to make an effective and purposeful representation. The demand made by the detenu for the document merely on the ground that there is a reference in the grounds of detention, cannot vitiate the otherwise legal detention order. No hard and fast Rule can be laid down in this behalf. What is essential is that the detenu must show that the failure to supply the documents

had impaired his right, however slight or insignificant it may be.

10. The Apex Court also in the case of Radhakrishnan Prabhakaran Vs. The State of Tamil Nadu and Others, has held as follows:

We make it clear that there is no legal requirement that a copy of every document mentioned in the order shall invariably be supplied to the detenu. What is important is that copies of only such of those documents as have been relied on by the detaining authority for reaching the satisfaction that preventive detention of the detenu is necessary shall be supplied to him.

11. From the above it is clear that the Petitioner that the Petitioner has a right to be supplied with the material documents on which reliance is placed by the detaining authority for passing the detention order but the detention order will not be vitiated, if the document although referred to in the order is not supplied which is not relied on by the detaining authority for forming of its opinion or was made the basis for passing the order of detention. The crux of the matter lies in whether the detenu's right to make a representation against the order of detention is hampered by nonsupply of the particular document.

12. The fact that the ground of detention could be a subject-matter of criminal prosecution is not enough to vitiate a detention order if the detaining authority does not choose to prosecute him and only passes an order of detention in accordance with law. In that case it will be no answer that the detenu must be prosecuted in the criminal Court in an open trial. The choice of the authority concerned for the mode of tackling the illegal activity cannot per se be illegal and the order of detention will be judged on its merits in accordance with the law.

13. It is not the case of the Petitioner, in the present case, that he asked for some relevant documents upon which the detaining authority relied upon and the same was not supplied to him. Therefore, he was not able to make a proper representation. As such, the contention of the Learned Counsel for the Petitioner that non-supply of the relevant documents vitiated the detention order is not sustainable in the eye of law and the unreported decision i.e. W.P.(Crl.) No. 279 of 2008 disposed of on 30.9.2008 relied on by the Learned Counsel for the Petitioner is clearly distinguishable on the facts of the present case. In that case the detenu had asked for record which was not supplied to him. Therefore, that decision is not applicable to the facts of the present case.

14. As regards the contention of the Learned Counsel for the Petitioner that the detaining authority was not able to establish that there was a public order situation, this Court is of the view that the detaining authority has to give reason since whether the activity of a person is likely to cause disturbance of the public order or not would depend upon the degree and the extent of the reach of the act upon the society. Public order is something more than ordinary maintenance of law and order. If the current of life of the community is disturbed, it will affect the public order and when only an individual is affected, that act will fall under the heading of "law and order". Therefore, it is to be examined what impact has

fallen on the act of the detenu on the society.

15. On a perusal of the detention order, it appears that in the said order it has been stated that the activities of the detenu were affecting the community at large and a large Section of society was being disturbed by the impact of the activities made by the detenu and his criminal associates.

16. The further contention of the Learned Counsel for the Petitioner is that the ground stated in the detention order relates to the incident on 4.2.2008 attracting the provision of Sections 341/323/294/379/34 IPC and for those criminal charges the Petitioner can be prosecuted instead of being detained u/s 3(4) of the Act. Therefore, the same is liable to be quashed and as some of the cases were shown by the detaining authority to have ended in acquittal, the detaining authority should have taken the said fact into consideration while issuing the detention order.

17. The Apex Court in the case of The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Others Vs. Sangala Kondamma, has held that the object of the Act was to prevent a person from indulging in anyone of the activities mentioned therein. It is necessary to satisfy the detaining authority with a chain of similar events which could give rise to a satisfaction of the detaining authority that the detenu is likely to indulge in such activities in the near future. In that process some of the facts narrated individually may not be sufficient for the said authority to form an opinion as to the need for such a detention. Therefore, the proposing authority will have to place materials before the detaining authority of a series of incidents which can satisfy the detaining authority as to the need for such detention. In that process some of the incidents/ grounds may not be proximate to the order of detention. If they are proximate to each other the fact that initial few incidents are not proximate to the order of detention, would not make the order of detention bad. Section 5-A of the Act was introduced to take care of the situations when one or more of the grounds can be separated from the other grounds for justifying detention. The stand that a single act cannot be considered sufficient for holding that public order was affected is clearly without substance. Where the detention order is based on more than one ground, by a legal fiction it would be deemed that there are as many orders of detention as there are grounds which means that each of such order is an independent one.

18. Therefore, considering the said position, it cannot be said t that while passing the detention order the detaining authority was not able to apply its mind and a mechanical order was passed.

19. Since there is no other contention and all the contentions) are answered negatively, this habeas corpus petition is dismissed.

P.K. Tripathy, J.

I agree.