

(2007) 12 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 333 of 2007

Ch. Simanchal Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 4
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 399, 402

Citation : (2007) 12 OHC CK 0047

Hon'ble Judges : A.K. Ganguly, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Gokulananda Mohapatra, P.K Sahoo and S.K Rout Additional Government Advocate for O. Ps. 1 to 4, for the Appellant; J.K. Mishra, Asst. Solicitor General, for O.P. No. 5, for the Respondent

Judgement

A.K. Ganguly, C.J.—In this Writ Petition which has been filed in the nature of a Habeas Corpus, the Petitioner has challenged the order of detention dated 1st February, 2007 passed against him under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as the "Act") by the District Magistrate, Ganjam, Chatrapur under the following facts.

2. The Petitioner's case is that he was arrested by Berhampur Sadar Police in connection with Berhampur Sadar P.S. Case No. 3 dated 4.1.2007 for the offences under Sections 399/402, I.P.C. read with Section 4(b) of the Explosives Substances Act, and forwarded to custody on 5.1.2007.

3. While the Petitioner was in custody in connection with the aforesaid case, an order of detention under the Act dated 1st February, 2007 was served on him and, thereafter, the grounds of detention were also served on him on 5.2.2007. The grounds of detention runs into several pages.

4. The only point on which the grounds of detention has been assailed before us has been stated in Paragraph-21 of the Writ Petition, which is as follows:

21. That in the present case the offences for which the Petitioner is in custody are triable by the Court of Sessions and normally the S.D.J.M. refuses the bail in Sessions triable cases. So mere filing of bail petition as noted in the grounds of detention before the Learned S.D.J.M. even without he same being moved is no ground and no material at all to pass order of detention. The acceptance of bail application is formal one. The moment an application is filed, the same is to be kept for order. So filing of bail application by detenu and the same is kept for consideration is at all no ground for passing order of detention.

5. It appears from the aforesaid ground of detention that the order of detention was served on the Petitioner while he was in jail. The detaining authority had not record any satisfaction in the order of detention that the Petitioner was likely to be released on bail.

6. The only satisfaction of the detaining authority which recorded was that the Petitioner was in custody in connection with the aforesaid case and he had applied for bail before the S.D.J.M., Berhampur and the said prayer for bail was accepted for consideration.

7. In this petition in Paragraph-21, a ground has been taken that the offences for which the Petitioner was taken to custody are triable by the Court of session and normally in such cases the S.D.J.M. is to refuse bail. So mere filing of bail petition cannot give rise to any apprehension in the mind of the detaining authority that the Petitioner was going to be released on bail. No such mention has already been made in the order of detention. It is stated that in the absence of such finding of the detaining authority, the order of detention cannot be sustained. This aspect has been dealt with in the counter affidavit filed by Opposite Party No. 1 in Paragraph 14 and also in the counter affidavit filed by the Opposite Party No. 2 in Paragraph-19.

8. While dealing with the stand of the Petitioner, in Paragraph 21 the Respondents have not been able to refute the Petitioner's stand.

9. It has been held by the Supreme Court in several cases that when the detenu is in jail, an order of detention cannot be validly passed unless it is shown that there is every possibility of his being released. In this connection, reliance is placed on a decision of the Supreme Court in the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, . Further in the case of Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, , the Supreme Court has held that the mere fact that the Petitioner has made an application for bail is not a sufficient ground for the detaining authority to record his satisfaction that the Petitioner is likely to be released on bail. From the mere fact of moving an application for bail, the said satisfaction cannot be generated and specially when no such satisfaction of the detaining authority has been recorded in the ground of detention. Similar view has also been taken by this Court in the case of Raju Sahu alias Bangra Raju v. State of Orissa and Ors., reported in (2007) 37 OCR 793 and in the case of Daba " Sudarsan Das Vs. State

of Orissa and Others, .

10. In view of such consistent view taken by this Court, this Court is of the opinion that in the instant case, the order of detention cannot be sustained.

11. In view of the aforesaid consistent judicial pronouncements and in view of the discussions made above, the present Writ Petition is allowed and the order of detention dated 1st February 2007 passed by the District Magistrate, Ganjam, Chatrapur (Annexure-2) is quashed. The Petitioner be set at liberty forthwith, if his detention is not required in connection with any other case.