
(1974) 11 OHC CK 0010
In the Orissa High Court

Jami Bhoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-11-1974

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 149, 294, 307

Citation : (1975) CriLJ 858

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

R.N. Misra, J.—This is an application, for a writ of habeas corpus challenging the order of detention of the petitioner u/s 3(1)(a)(ii) of the Maintenance of Internal Security Act of 1971 (hereinafter referred to as the "Act") passed by the District Magistrate of Cuttack (Opposite Party No. 2).

2. The following grounds were supplied to the detenu in support of the order of detention:

(1) On 19-8-1973. you along with your gang members were found to have congregated at the back of the Raia-bagicha High School in Cuttack City preparing to commit a dacoity. You along with your gang members were caught red-handed with various appurtenances like knives, crackers, torch lights, black masks, black cloths and liquor bottles were recovered from your possession. In this connection Lai Ba^{*} P. S. Case No. 415 dated 20-8-1973 u/s 399/402. I.P.C. was started and charge-sheeted against you and your associates.

(2) On 8-11-1973, you along with some others proceeded from Cuttack to Jagatsinghpur with intention to commit the murder of one Debi Prasad Chaudhury, the then Secretary of S. V. M. College Union and to terrorise the student community of Jagatsinghpur and in order to commit the heinous crime, you along with others went to the S. V. M. College Campus and assaulted Sri Chaudhury so seriously so as to almost murder him. However, the latter managed to escape miraculously but not before he sustained bleeding injuries on

his person. In order to screen yourself from this heinous crime, you falsely gave out your name as Nirmal Sahu before the Jagatsinghpur Police. For this incident you along with your companions were charge-sheeted vide Jagatsinghpur P. S. Case No. 80 dated 11-8-1973 u/s 147/341/ 307, I.P.C.

(3) Though you are now concerned in as many as 6 cognizable cases, as mentioned below and out of these 6 cases, whilst you were on bail in 4 cases, you along with your (tana) members started systematically terrorising the public and students and you have proved yourself to be a hazard to the society:

List of cases. 1. Lalbag P. S. Case No. 600. dt. 30-11- 1968 u/s 147/ 436/380 I.P.C. 2. -do- No. 205. dt. 13-5- 1970 u/s 457, I.P.C. 3. -do- No. 415. dt. 29-8- 1973 u/s 399/ 402. I.P.C. 4. Jagatsinghpur P.S. Cr. No. 80. dt. 11-8-1973 u/s 147/341/307. I.P.C. 5. Lalbag P.S. Cr. No. 143, dt. 21-3-1974 u/s 143/336/ 341/323/294. I.P.C. 6. -do- No. 147. dt, 22-3- 1974 u/s 147/ 323/336/341/149. I.P.C. (a) That on 18-3-1974 whilst one M, K. Chatterjee a student of Christ College was proceeding on Mission Road in Cuttack City. you manhandled him on the way and threatened him on the point of a knife to take his life. When the alarm was raised by Sri Chatterjee and other people arrived there, you managed to escape. ;

On 19-3-1974 when Sri M. K. Chatterjee with some of his colleagues were coming on Mission Road in Cuttack City, you along with your associates had concealed in a lane to attack Sri Chatterjee and his colleagues once again. On seeing them, you along with your associates started to pelt stones at them and also chased them all the time throwing brickbats. So far as the above two incidents are concerned, Lalbag P. S. Case No. 143 dated 21-3-1974 u/s 143/336/341/323/ 294, I.P.C. which has been started against you and your gang members and is now under investigation.

(b) On 19-3-1974. when one Sudhir Kumar Patnaik a student of Stewart College. Cuttack was going towards Christ College, you alone with your associates manhandled him on the way and when Sri Patnaik managed to escape you also chased him armed with deadly weapons, viz., knife, iron rods, fibres etc. In this connection Lalbag P. S. Case No. 147 dated 22-3-1974 u/s 147/323/336/341/ 149, I.P.C. is under investigation against YOU and your sane members. You are found, as explained above, regularly acting in a manner prejudicial to the maintenance of public order and hence the imperative and immediate need of invoking the provisions of the Maintenance of Internal Security Act. 1971 (Act No. 26 of 1971).

3. The petition challenges the order of detention mainly on three grounds :

(1) The grounds supplied to the detenu in support of his detention are vague. Therefore, he has been deprived of the opportunity of making an effective representation against his detention.

(2) The grounds indicated do not justify detention on the allegation that

maintenance of public order is oreiudiced. What has been disclosed if accepted would at best show that the detenu had committed certain offences punishable under the criminal law and his actions could be prejudicial to maintenance of law and order.

(3) The detenu could not be simultaneously tried for offences and be detained on the same charges under the-Act.

4. The detaining authority has given an affidavit to support the order of detention. The petitioner's representation: wag dealt with by the Advisory Board and at their advise the State Government has made an order detaining the petitioner for a period of one year from the-date of the detention.

5. We shall now deal with the-three contentions raised by the petitioner.

Contention No. 1.

As would appear from the particulars given in the grounds, the dates of the incidents have been detailed. Similarly the places of occurrence have also been clearly indicated. The nature of activity and the conduct of the detenu have also been described at some length. The victims of the detenu's systematic attacks have also been named. What has really not been given, according to the petitioner, is the list of members of the gang to which the detenu is said to have belonged. We do not agree with the contention of Mr. Misra, for the petitioner that in these circum-i stances non-mention of the names of the,1 members of the gang has prejudiced the petitioner in any manner.

In the case of S.K. Ibrahim Vs. The State of West Bengal and Others, the Court was considering the allegation of vagueness on a similar around. After quoting the grounds, wherein the-allegation wag "you and your associates-..." and the names of the associates-had not been eiven, the Court said:

It would appear from the above that the date, time and place of each of the incidents were specified in the grounds. Particulars were also given regarding the-nature of the activities of the petitioner. The facts stated in the sroundg of detention were sufficient to apprise the petitioner of the precise activities on account of which the detention order had beers made. It cannot in the circumstances be said that the petitioner was in any way handicapped in making an effective re-ipresentation, The fact that the names of the associates of the petitioner were not mentioned in the grounds of detention would not go to show that they suffered from the infirmity of vagueness....

In the case before us, the petitioner has already made a representation. If he felt handicapped at that point, it was open to him to call for better particulars and if the detaining authority had not supplied the same, the .petitioner could have raised that as a point. In these circumstances, we are not satisfied that there is merit in this contention.

Contention No. 2.

6. The order of detention in this case is on the ground that the detenu has been indulging in activities prejudicial to the maintenance of public order, In the case of Pushkar Mukherjee and Others Vs. The State of West Bengal, this question was examined at length. The Court said :

...Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprit cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act....

The dictum laid down by Hidayatullah, J. (as the learned Judge then was) in Dr. Ram Manohar Lohia Vs. State of Bihar and Others, to the following effect was quoted with approval:

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 disorder 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 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....

The grounds in this case clearly indicate that the detenu was a bad character and was terrorising the student community as such, The fact that on several occasions within a short period of time he had been pursuing students at different places goes to show that he was available to be set against them. This certainly is not a case of law and order and must be taken to be one that affects the even tempo of life in society at large and the activities of the detenu are of the second category as indicated by Hidayatullah, J. We are, therefore, satisfied that the detaining authority was right in reaching his satisfaction that these activities affected maintenance of public order and were not confined to problems of law and order. The second contention of Mr. Misra must, therefore, be negated.

7. Contention No. 3. It is a fact that the petitioner has been involved in a series of criminal cases and as the third ground indicates, notwithstanding the fact that he was involved in six pending cases at that time, when he was on bail, he still committed acts with a view to terrorising the student community. Mr. Misra has brought to our notice that there has been acquittal in one of these cases and in another there has been an order of discharge. The fate of the other criminal cases is not known as no material has been placed on either side before us. Reliance is placed by Mr. Misra in support of his contention that, on the same set of allegations there cannot be two proceedings, one under the Act and the other under the ordinary criminal law. On a decision of the Supreme Court in the case of *Biram Chand Vs. State of Uttar Pradesh and Others*, . In the said decision, the earlier decision of the Supreme Court in the case of *Mohd. Salim Khan Vs. Shri C.C. Bose and Another*, was quoted with approval, where it had been said :

The mere fact, however, that criminal proceedings in connection with the same incidents had been adopted against the petitioner and he had been discharged! by the trying Magistrate does not mean that no valid order of detention could be passed against him in connection with those very incidents, or that such an order can for that reason be characterised as mala fide. It might well be that a Magistrate trying a particular person under the Code of Criminal Procedure has insufficient evidence before him, and, therefore, has to discharge such a person. But the detaining authorities might well feel that though there was not sufficient evidence admissible under the Evidence Act for a conviction the activities of that person, which they had been watching, were of such a nature to justify an order of detention. From the mere fact, therefore, that the Magistrate discharged the petitioner from the criminal case lodged against him it cannot be said that the impugned order was incompetent, nor can it be inferred that it was without a basis! or mala fide.

The dictum laid down here in our view answers sufficiently the contention of Mr. Misra for the petitioner that as there has been an acquittal and discharge in two of the cases referred to in the Grounds of detention, the order of detention is vitiated. He relies upon what has been stated in paragraph 10 of the Judgment in *Biram Chand's* case. The learned Judges have stated :

...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 laid down by this Court. The position will be, however, entirely different if the authority concerned makes an order of detention under the Act. and also prosecutes him in a criminal case on the self-same facts. This, in our view, is totally barred. 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 as in the case of the first information report dated 5th August, 1973 furnishing the grounds 9 and 10 of the detention order. The fact itself introduces a serious innrmity in the order of detention for which the same must be held to be invalid.

A larger Bench of the Supreme Court in the case of Ashim Kumar Ray Vs. The State of West Bengal, had laid down the law thus:

It is well settled that the mere fact that the police at first had arrested the petitioner and initiated steps to wosecute him under the Code of Criminal Procedure and had even lodged a first information report would be no bar against the District Magistrate issuing an order under a preventive detention statute if at the time of passing such an order he is satisfied that it was necessary to do so on grounds permissible to him under the Act. Where, however, the concerned person is actually in iail custody"at the time when order of detention is passed against faction on the iart of the detaining authority as to the likelihood of such a person indulgine in activities which would jeopardise either the security of the-State or the public order. But such is. not the position in the present case, The1 representation made by the petitioner to the State Government itself shows that he was arrested on Auaust 1, 1971 in connection with the incident narrated in the-first sround of detention. He was. however, enlarged on bail subject to the condition that he would attend the Dolice station, presumably on certain days. On November 22. 1971. when the impuenec? order was passed, the petitioner thus was-no longer in iail custody, and therefore, the District Magistrate could have the* satisfaction from the record before him that there was likelihood of his acting in a manner prejudicial to the maintenance- of public order....

In Ashim Kumar's case, therefore, the-criminal law had been set in motion and the charge was pendin? investigation-when the order of detention was passed and was upheld. The dictum laid down in Biram Chand's case must, therefore, be confined to the facts therein and the-principles indicated in Ashim Kumar's case would not nullify the order of detention in the case before us. Third contention of Mr. Misra must also fail.

8. In the result, we dismiss this writ application.

K.B. Panda, J.

9. I agree