
(2014) 09 OHC CK 0039
In the Orissa High Court
Case No : W.P. (Crl.) No. 197 of 2014

K. Alley

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)

National Security Act, 1980 — Section 10, 12(1), 13, 3(2), 3(4)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2014) 118 CLT 1151 : (2015) 1 ILR 505 : (2014) 2 OLR 1083
Suppl. : (2014) 2 OLR 1083

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—In the present writ petition, petitioner challenges the legality of the order of detention dated 09.01.2014 (Annexure-1) passed by the District Magistrate, Ganjam-opposite party no. 2 in exercise of power u/s 3(2) of the National Security Act, 1980 (in short "the Act") on the ground that the said order is illegal and contrary to law.

2. Petitioner's case in a nutshell is that opposite party no. 2 in exercise of power u/s 3(2) of the Act has passed the order of detention on 09.01.2014 which was served on the petitioner-detenu on 12.01.2014 while he was in jail custody in connection with certain criminal cases. Thereafter, the petitioner was served with the grounds of detention on the same day issued by opposite party no. 2. In the said grounds of detention, reliance has been placed on 6 (six) criminal cases pending against the petitioner. The State Government in exercise of power u/s 3(4) of the Act has approved the order of detention vide order dated 18.1.2014 under Annexure-3. On receipt of such grounds of detention, the petitioner has submitted his representation on 19.01.2014 to the jail authorities, separately to the Advisory Board of the State Government as well as the Central Government. Petitioner's representation was referred to the Advisory Board of the State

Government and the date of hearing was fixed to 13.2.2014. Subsequently, the matter was adjourned to 19.02.2014 by the Advisory Board and at that stage the petitioner prayed to opposite party No. 2 to permit him to appear before the Advisory Board on the date fixed, i.e., on 19.02.2014. In exercise of the power conferred u/s 12(1) read with Section 13 of the Act, the State Government confirmed the detention order for twelve months from the date of the petitioner's detention vide order dated 11.03.2014. The representations of the petitioner were rejected on 18.03.2014. Hence, the present writ petition.

3. Ms. D. Mohapatra, learned counsel for the petitioner-detenu submitted that the documents supplied to the petitioner-detenu along with the grounds of detention are illegal and the same are violative of Article 22(5) of the Constitution of India. When the order of detention was approved by the State Government, it is incumbent upon the State Government as per Section 3(5) of the Act within seven days to report the fact to the Central Government together with the grounds on which the order has been passed and such other particulars which in the opinion of the State Government have a bearing on the necessity for the detention order. The State Government has not reported the order of detention and the approval thereof to the Central Government as per Section 3(5) of the Act for which the order of detention is not sustainable and is liable to be quashed. There is no material on record to show that the State Government has conferred the power on the District Magistrate to issue the order of detention. Representation of the petitioner dated 28.01.2014 was mechanically rejected by the State Government vide order dated 18.3.2014 without any proper application of mind. Thus, there was a delay of one month and 18 days. The said rejection order is cryptic and non-speaking one. There has been a delay in dealing with the representation of the petitioner by the State Government which is violative of Article 22(5) of the Constitution of India. The representation dated 28.1.2014 of the petitioner to the Central Government was also rejected on 21.3.2014 after a delay of about two months which is also violative of Article 22(5) of the Constitution of India.

4. Ms. Mohapatra further submitted that the Advisory Board to which the case of the petitioner was referred u/s 10 of the Act was of the opinion that there is sufficient cause for detention of the detenu. In view of such opinion of the Advisory Board, the State Government has mechanically confirmed the order of detention of the petitioner u/s 12(1) of the Act and u/s 13 of the Act directed detention of the petitioner for 12 months vide order dated 11.3.2014. The grounds of detention contained in Annexure-2 relate to ordinary law and order situation but not affecting the public order. The petitioner, who is a social worker and is espousing the cause of poor fishermen, has been arrested in connection with several criminal cases registered in one year, i.e., 2013. The petitioner was elected as a Sarpanch of Arjipalli Gama Panchayat from 2007 to 2012 and due to some political rivalry and in connivance with Gopalpur Port Authority, five cases have been registered against him along with other non-cognizable cases. In all the cases, the petitioner has been released on bail by the learned Sessions Judge

as the cases against him are without any basis. The aforesaid order of detention is speculative in nature and does not have any foundation. The grounds on which the order of detention was passed against the petitioner have no nexus with the object sought to be achieved by the authority. In support of her contention, she relied on judgments of this Court in the case of Pradeep Sahu Vs. Union of India, Buntty @ Ayushman Purohit Vs. State of Orissa and two others, 2013 (I) OLR 416; and Kutuli @ Iswar Naik Vs. State of Odisha and Others,

All the criminal cases have been foisted by the police being influenced by the political persons. So far as non-F.I. Rs. are concerned, the petitioner has not received any notice and has no knowledge regarding station diary entry made against him. Since the criminal cases have been registered and are pending in the court of law, the criminal law is sufficient to punish the detenu and there is no necessity to resort to the National Security Act. The alleged act of the petitioner cannot be said to have disturbed the public order. Since the petitioner was in jail custody, he cannot disrupt the public order or even tempo of life and this aspect has not been appreciated. Thus, the order of detention is purely speculative, result of non-application of mind and the same has been passed without any basis or cogent materials. There is absolutely no complaint of any breach of public order and therefore, the order of detention is illegal. The representations of the petitioner having been rejected by the State Government as well as the Central Government after delay of 48 and 52 days respectively, the same is illegal and arbitrary. It is incumbent on the part of the State Government as well as the Central Government to dispose of the representation immediately.

5. Mr. Bhuyan, learned Additional Government Advocate for the State submitted that the information regarding detention along with other relevant materials were received in the Home (Special Section) Department on 15.1.2014 and the matter was placed before the Government for consideration and the same was approved on 17.01.2014. The approval order was communicated to the detenu through the detaining authority vide Order No. 135/C dated 18.01.2014. After approval of the order by the State Government, the same was communicated to the Ministry of Home Affairs, Government of India and the Secretary, N.S.A. Advisory Board, Odisha in Home (Special Section) Department Letter No. 140/C dated 18.1.2014 and No. 141/C dated 18.1.2014 respectively. The report and opinion of the NSA Advisory Board dated 26.2.2014 was received in the Home (Special Section) Department on 28.2.2014. The opinion of the Board as well as other relevant materials in connection with the detention were considered by the State Government and the detention of the detenu was confirmed by the State Government, which was communicated to him through the detaining authority in Home (Special Section) Department Order No. 665/C dated 11.3.2014. The Odia representation dated 28.1.2014 and the English representation dated 10.2.2014 were received in Home (Special Section) Department on 1.3.2014 from the District Magistrate, Ganjam. A copy of the English representation dated 10.2.2014 and parawise comments of the Detaining Authority were forwarded to the Government of India, Ministry of Home Affairs in Home (Special Section)

Department Letter No. 543/C dated 4.3.2014. The District Magistrate, Ganjam was also requested in Home (Special Section) Department Letter No. 542/C dated 4.3.2014 to submit the English version of the Odia representation dated 28.1.2014 as well as parawise comments in English for onward transmission to the Government of India. After careful consideration of the representation of the detenu as well as comments of the Detaining Authority and all relevant papers, the State Government rejected both the representations of the detenu on 15.3.2014. This was communicated to the detenu through the Detaining Authority in Home Department Letter No. 782/C dated 18.3.2014. The grounds of detention indicate the criminal activities of the detenu which were prejudicial to the maintenance of public order of the locality. The order of detention has been passed to prevent the detenu from acting in any manner which are detrimental to the maintenance of public order. The order passed by the Detaining Authority, which was confirmed by the Government of Odisha, is preventive and not at all punitive.

6. Mr. Bhuyan further submitted that the petitioner has not submitted any representation to the Sub-Jail Authority on 19.1.2014, but, however, he has submitted his representation dated 28.1.2014 addressed to the Hon"ble Chief Minister and Hon"ble Home Minister, Odisha, Bhubaneswar which was received by opposite party no. 2 on 05.02.2014. Parawise comments on the said representation of the petitioner were sent to the Deputy Secretary to Government, Home (Special Section) Department, Odisha, Bhubaneswar vide Letter No. 167/Res dated 11.2.2014 with a copy to the Deputy Secretary-cum-Secretary to NSA Advisory Board, Odisha, Cuttack. All the grounds as mentioned in the grounds of detention are valid. The Marine P.S. Cases registered against the petitioner reveal disruption of public order owing to criminal activities of the petitioner. As the criminal act of the petitioner affected public order and disturbed the even tempo of the general public, the petitioner was arrested on 11.11.2013 in Marine P.S. Case No. 10 dated 10.11.1213 under Sections 147/148/294/341/323/325/307/149 I.P.C. and forwarded to the court of learned S.D.J.M., Chhatrapur on 11.11.2013. The petitioner might have come out on bail in some other cases, but it does not mean that he is acquitted of the charges levelled against him in P.S. Cases as mentioned in the grounds of detention. As the criminal background of the petitioner is enough to show that the punitive detention under the provisions of Cr.P.C. is not sufficient to prevent him from becoming a threat to public order and tranquility in Marine P.S. area of Ganjam district, the only option left was to invoke the extra ordinary provisions u/s 3(2) of the N.S. Act so as to prevent the petitioner from coming out of jail and acting in a manner prejudicial to maintenance of public order. The petitioner has violated the law and has become a threat to public order and tranquility in Marine P.S. area. On receiving the report from the Superintendent of Police, Ganjam vide his Letter No. 72/IB dated 5.1.2014, opposite party no. 2 examined the documents in detail submitted before him, discussed the matter with Superintendent of Police, Ganjam and ultimately opposite party no. 2 was

subjectively satisfied and convinced that the incidents and occurrences committed by the petitioner as stated in the report of the Superintendent of Police, Ganjam were heinous in nature and were sufficient to prevent the petitioner from becoming a threat to public order and tranquility in Marine P.S. area of Ganjam district and the only option left was to invoke the extra ordinary provisions of National Security Act, 1980.

7. Mr. A.K. Bose, learned Asst. Solicitor General for the Union of India submitted that a copy of the representation of the detenu dated 10.02.2014 and parawise comments of the detaining authority forwarded by the Government of Odisha vide its letter no. 543/C dated 04.03.2014 were received by the Central Government in the concerned Section of the Ministry of Home Affairs on 12.3.2014. On receipt of the same, the representation along with para-wise comments was processed for consideration of the Union Home Secretary on 13.3.2014. The file reached the Under Secretary (NSA) on the same day, i.e., 13.3.2014. The Under Secretary (NSA) with his comments forwarded the same to the Joint Secretary (Security) on the very same day, i.e., 13.03.2014. With the comments of Joint Secretary (Security), the file was sent to Union Home Secretary on 14.3.2014. The Union Home Secretary after considering the order of detention and grounds of the representation of the detenu and the comments of the detaining authority rejected the representation on 20.3.2014 (15.3.2014 and 16.3.2014 were holidays being Saturday and Sunday and 17.3.2014 was being the Holi) and sent the file back to the Joint Secretary. The file reached the Section through the aforesaid level of officers on 21.3.2014. Accordingly, a wireless message no. II/15030/01/2014-NSA dated 21.3.2014 was sent to the Home Secretary, Government of Odisha, Bhubaneswar, Superintendent, Sub-Jail, Chhatrapur, District Magistrate, Ganjam and the detenu informing that the representation of K. Alleya was considered and rejected by Central Government.

8. On rival contentions of the parties, the following questions fall for consideration by this Court.

(i) Whether delay of 46 days in considering the representation of the petitioner by the State Government warrants interference with the order of detention on the ground that it is in violation of Article 22(5) of the Constitution of India?

(ii) Whether there is any delay on the part of the Central Government in disposing of the representation of the petitioner?

(iii) Whether the grounds on which the detention order is passed against the petitioner satisfies the legal requirement that the detention order is to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order ?

(iv) What order?

9. Question Nos. (i) and (ii) being inter-linked, they are dealt with together.

To deal with the question No. (i) and (ii), i.e., delay and laches on the part of the

opposite party-State Government as well as the Central Government in dealing with the representations of the petitioner, the following dates need to be noted.

10. There is confusion with regard to the date of submission of representations of the petitioner. In paragraph 7 of the writ petition, it is stated that the petitioner has submitted his representation on 19.01.2014 through Jail Authorities. In paragraph 9 of the writ petition, it is stated that the representation of the petitioner dated 28.01.2014 was mechanically rejected by the State Government. In paragraph 11 of the counter affidavit filed by opposite party No. 2-Collector & District Magistrate, Ganjam, it has been stated that "petitioner has not submitted any representation through the Sub-Jail Authority on 19.01.2014. However, he has submitted representation dated 28.01.2014 addressed to the Hon"ble Chief Minister and Home Minister, Odisha, Bhubaneswar which was received by opposite party No. 2 on 05.02.2014 vide Memo No. 115 dated 19.01.2014 of Superintendent of Sub-Jail, Chhatrapur."

It is not understood if the petitioner has not submitted its representation on 19.01.2014 and submitted the same on 28.01.2014 how his representation was received by opposite party No. 2 on 05.02.2014 vide Memo No. 115 dated 19.01.2014 of the Superintendent of Sub-Jail, Chhatrapur as per his own admission. In other words, had the petitioner not sent his representation on 19.01.2014, there was no occasion on the part of the Superintendent of Sub-Jail, Chhatrapur to send such representation vide Memo No. 115 dated 19.01.2014 to opposite party No. 2. Be that as it may, even if accepting the facts stated in paragraph 4.3 of the counter affidavit of opposite party No. 1 that the Odia representation dated 28.01.2014 and the English representation dated 10.02.2014 were received in the Home (Special Section) Department on 01.03.2014 from the District Magistrate, Ganjam, there is a delay of 31 days in sending the Odia representation of the petitioner to the Home (Special Section) Department and there is no explanation for such delay. Similarly, so far English representation dated 10.02.2014 is concerned, there is a delay of 18 days in sending English representation of the petitioner to Home (Special Section) Department and there is also no explanation to such delay.

11. The carelessness of the District Magistrate, Ganjam in dealing with the representation of the petitioner is further evident from the averments made in paragraph 8 of the counter affidavit filed by opposite party No. 1. In paragraph 8 of the said counter affidavit, it is stated that "...that Odia representation dated 28.01.2014 and English representation dated 10.02.2014 were received in Home (Special Section) Department on 01.03.2014 from the District Magistrate, Ganjam. Para-wise comments of the detaining authority on the above representation were received in the Home (Special Section) Department on 28.02.2014. As there were only parawise comments on the representation of the petitioner, detaining authority was requested over telephone to send the representations and those were received on 01.03.2014".

As it appears, the District Magistrate, Ganjam is not aware of the importance and

necessity of dealing with the representation of a detenu with utmost urgency. Otherwise, he would not have sent only the parawise comments on the representation of the petitioner without enclosing the representation of the petitioner for which he was requested over telephone to send the representation which was received only on 01.03.2014. From said paragraph 8, it is further revealed that the District Magistrate, Ganjam was requested by the Home (Special Section) Department vide letter No. 542C dated 04.03.2014 to submit English version of Odia representation dated 28.01.2014 as well as the parawise comments in English for onward transmission to the Government of India. We fail to understand as to why the District Magistrate, Ganjam after receiving the Odia representation of the petitioner-detenu has not sent the same along with English version of the said representation to Home (Special Section) Department and instead he waited till he was requested for sending the same. Moreover, the petitioner has submitted English representation on 10.02.2014. Ultimately, the representation of the petitioner was rejected on 15.03.2014 and communicated to the detenu on 18.03.2014 through the detaining authority in Home (Special Section) Department vide letter No. 782/C dated 18.03.2014. Thus, there is a delay of 46 days in disposing of the representation of the petitioner without any explanation for such delay which is not permissible under law.

12. Further, the English representation dated 10.02.2014 along with parawise comment of the detaining authority were forwarded to the Central Government only on 04.03.2014 and there is no cogent explanation for such inordinate delay.

13. All these go to show that the representation of the petitioner has not been sincerely dealt with by the State Government and there is no explanation for the delay caused in disposing of the same. On the above solitary ground, the writ petition deserves to be allowed.

14. The specific stand of the Union of India is that the English representation of the petitioner dated 10.02.2014 along with para-wise comments of the detaining authority were received by the Central Government in the concerned Section, Ministry of Home Affairs on 12.03.2014. On 13.03.2014, the representation of the petitioner along with parawise comments was processed for consideration by the Union Home Secretary. On the same day, i.e., on 13.03.2014 the file reached the Under Secretary (NSA), who with his comments forwarded the same to the Joint Secretary (Security) on the selfsame day. On the next day, i.e., 14.03.2014, the file was sent to the Union Home Secretary. After duly considering the order of detention and grounds for the same, the representation of the detenu and comments of the detaining authority, the Central Government rejected the representation on 20.03.2014. In between 14.03.2014 and 20.03.2014, 15.03.2014 and 16.03.2014 were holidays being Saturday and Sunday and 17.03.2014 was a gazetted holiday being Holi. Accordingly, Wireless Message No. II/15030/01/2014-NSA dated 21.03.2014 was sent to the Home Secretary, Government of Odisha, Bhubaneswar; Superintendent of Sub-Jail, Chhatrapur; District Magistrate, Ganjam, Odisha and detenu informing that the

representation of the petitioner was considered and rejected by the Central Government. Thus, there appears to be no delay on the part of the Central Government in dealing with representation of the detenu.

15. Law is well-settled that the representation of a detenu under the Act must be attended promptly, as the same infringes the fundamental rights of the detenu guaranteed under Article 22 of the Constitution. At this stage, it is necessary to refer to some of the decisions of the Hon''ble Supreme Court and this Court.

16. In *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Others*, the Jail Superintendent to whom the representation was handed over by the detenu for onward transmission, kept it unattended and pending with him for 7 days. The Jail Superintendent gave no explanation as to why the representation was retained though opportunity was afforded to him.

The Hon''ble Supreme Court held that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in disposal of the detenu's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the detenu as illegal and constitutionally impermissible.

17. The Hon''ble Supreme Court in *Smt. Khatoon Begum Ors. Vs. Union of India (UOI) and Others*, it is held that a person preventively detained under the provisions of the National Security Act is entitled to be released if there is delay in the consideration of the representation made by him to the detaining authority. It cannot be urged in respect of detention under the Security Act that a certain amount of delay was inevitable having due regard to the procedure prescribed by the Act and, therefore, delay in consideration of the representation should not be allowed to prejudice the detention.

18. Article 22(5) enjoins a duty on the authority making the order of detention to afford the detenu "the earliest opportunity of making a representation against the order". The right and obligation to make and to consider the representation at the earliest opportunity is a constitutional imperative, which cannot be curtailed or abridged. If the Parliament or the State legislature making the law providing for preventive detention devises a circumlocutory procedure for considering the representation or if the inter departmental consultative procedures are such that delay becomes inevitable, the law and the procedures will contravene the constitutional mandate. It is essential that any law providing for preventive detention and any authority obliged to make orders for preventive detention should adopt procedures calculated towards expeditious consideration of representation made by detenu.

19. In, *Shri. Saleh Mohammed Vs. Union of India (UOI) and Others*, , it is held as follows:-

"Times out of number, this Court has emphasized that where the liberty of an individual is curtailed under a law of preventive detention, the representation, if any, made by him must be attended to, dealt with and considered with watchful care and reasonable promptitude lest the safeguards provided in Article 22(5) of the Constitution and the statute concerned should be stultified and rendered meaningless. Here in the instant case we find that the functionaries of the State in attending to the representation of the detenu have been guilty of gross negligence and chill indifference. For more than three weeks, the representation of the detenu remained lying unattended in the office of the Superintendent of Jail, or the Inspector-General of Prisons. This inordinate, unreasonable and unwarranted delay of about 22 days amounted to a violation of Article 22(5), which guarantees to the detenu a right to have his representation considered with reasonable expedition. It was on this short ground that we had, as per our order dated August 20, 1980, allowed this writ petition, quashed the order of Saleh Mohammed's detention and directed his release forthwith."

20. In *Noor Salman Makani Vs. Union of India and others*, while examining the similar issue the Hon"ble Supreme Court observed that day to day delay in disposal of representation is required to be explained by the Authority to whom the representation is made. While dealing with the issue the holidays have been excluded, but inordinate delay in consideration and disposal of the representation may be fatal.

21. In the case of *Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others*, - 684, the Hon"ble Supreme Court quashed the order of preventive detention made against the detenu as seven days" delay occurred in forwarding of the representation which remained unexplained and none of the documents relied upon by the detaining Authority in passing the detention order was found to be pertinent. (See also *Md. Raju @ Md. Azim vs. State of Odisha and others*, (2012) 51 OCR 1027)

22. This Court in *Bijaya Parida Vs. State of Orissa and Others*, for 15 days" delay in the matter of disposal in detenu's representation, quashed the order of detention. Again in the case of *Ananta Parida Vs. State of Orissa and Others*, for the same delay of 15 days in disposing of the detenu's representation, this Court also quashed the order of detention. Similarly, in the case of *Sankar Gouda Vs. Union of India (UOI) and Others*, this Court quashed the order of detention for delay of thirty-five days on the part of the State Government in disposing of the representation of the detenu.

23. This Court in *Shanina Begum Vs. State of Orissa and Others*, held that laches on the part of the State Government in forwarding the representation to the Central Government for a period of eighteen days vitiated the detention order.

24. If the case of the petitioner is examined in the light of the above legal propositions, we have no hesitation to hold that there was inordinate/unreasonable and unwarranted delay on the part of the State Government in

dealing with the representation of the detenu, which has infringed the fundamental rights of the detenu guaranteed under Article 22 of the Constitution.

25. Since there was delay and laches on the part of the State Government in disposing of the representation of the petitioner dated 28.01.2014/29.01.2014 in view of above legal position, the order of detention is not sustainable and liable to be set aside.

26. Since the order of detention is quashed on the ground of inordinate delay in disposal of the representation of the petitioner there is no need to deal with question No. (iii) which would only amount to academic in nature.

27. Before we part with the case, we express our displeasure for the casual manner in which the administrative functionaries have acted to deal with the matter. The Hon"ble Supreme Court and this Court in innumerable cases have highlighted the constitutional mandate to deal with the representation of a detenu with utmost urgency. But in the present case, the contrary is the fact-situation. Such instance sends out a wrong message about the intention of the administrative authorities concerned.

28. In view of the above, we allow the writ petition, quash the impugned order of detention dated 09.01.2014 passed by the District Magistrate, Ganjam, Chatrapur under Annexure-1 and direct that the petitioner-detenu be set at liberty forthwith, if his detention is no longer required in connection with any other case.