
(2014) 09 OHC CK 0046
In the Orissa High Court
Case No : W.P. (Crl.) No. 146 of 2014

Kadim

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Arms Act, 1959 — Section 25
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 307, 34, 394

Citation : (2014) 118 CLT 1167 : (2014) CriLJ 4912 : (2015) 1 ILR 716 : (2014) 2 OLR 1105

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

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—B.N. Mahapatra, J. Challenge in the present writ petition has been made to the legality of order of opposite party No. 2-Collector, Sambalpur passed on 24.10.2013 in exercise of power u/s 3(2) of the National Security Act, 1980 (for short, "NS Act") directing detention of the petitioner on the ground that there is non-application of mind on the part of the Detaining Authority in passing the order of detention.

2. Shorn of unnecessary details, petitioner's case in a nut-shell is that the grounds of detention issued by opposite party No. 2 on 25.10.2013 was served on the detenu on 26.10.2013 while the petitioner-detenu was in Circle Jail, Sambalpur. The detenu made a representation on 14.11.2013 to the State Government against the order of detention. Further case of the petitioner is that his representation was referred to the Advisory Board and the Board found that there was sufficient cause for rejection of the representation of the detenu dated 14.11.2013. The said representation had been considered and rejected by the State Government. Similarly, the detenu was informed on 06.12.2013 that his representation had been considered and rejected by the Central Government. The detenu was informed about rejection of his representation vide letter dated

18.12.2013. Hence, the present writ petition.

3. Though several grounds had been taken to challenge the order of detention in the writ petition, Mr. Saring, learned counsel for the petitioner confined his argument to the ground that the order of detention has been passed mechanically without application of mind by the detaining authority; therefore, the order of detention passed under Annexure-1 is not sustainable in law. Mr. Saring drew attention of this Court to the report of the Superintendent of Police as well as the grounds of detention and submitted that those were prepared on the very same day the detention order was passed. The grounds of detention is the exact verbatim reproduction of the report of the Superintendent of Police which indicates that instead of applying his mind independently to the facts and circumstances of the case, the Detaining Authority has simply reproduced the report of the Superintendent of Police in the grounds of detention. Therefore, it was argued that the order of detention is not sustainable in law. In support of his contention, Mr. Saring relied upon the decision of this Court in the case of Logen Kumari Samal @ Bhalu vs. State of Orissa & Ors., (2006) 35 OCR 740.

4. Mr. M.S. Sahoo, learned Additional Standing Counsel for the State-opposite party Nos. 1 and 2 submitted that the detaining authority after applying his judicial mind to the facts and circumstances of the case passed the order of detention. It does not suffer from any infirmities or non-application of mind. The facts are based on records. It has been mentioned that the petitioner's antisocial and criminal activities are in high pitch and the general laws are not sufficient to curb his activities. In order to maintain public order in the society, detention order in the instant case is justified. Records of the instant case shows that the petitioner has no respect for the law of the land and went on continuing with antisocial and criminal activities repeatedly after being released from Jail.

5. On the rival contentions of the parties, the only question that falls for consideration by this Court is whether the order of detention is not sustainable in law on the ground of non-application of mind on the part of the Detaining Authority.

6. On perusal of the grounds of detention passed under Annexure-2 and the report of the Superintendent of Police, Sambalpur dated 23.10.2013 under Annexure-3, it reveals that the grounds of detention appear to be mere reproduction of the report of the Superintendent of Police, Sambalpur submitted before the Detaining Authority. The grounds of detention run about seven and half pages; similarly, report of the Superintendent of Police, Sambalpur also runs about nine pages. The differences noticed between the two are that (i) the detenu has been addressed as "you" in the detention order instead of stating his name as has been done in the report of the Superintendent of Police, Sambalpur and (ii) the conduct of the detenu has been described in different words in the first paragraph of both.

7. It would be relevant to reproduce here at least two paragraphs from the

grounds of detention and two paragraphs from the report of the Superintendent of Police, Sambalpur to illustrate the 1st difference.

The relevant paragraph of the grounds of detention is extracted below:

"At present you are in Circle Jail, Sambalpur being remanded in G.R. Case No. 1712/13 in the file of the Court of S.D.J.M., Sambalpur arising out of Khetrampur P.S. Case No. 123 dt. 22.08.2013 u/s. 394/307/34 IPC read with sec. 25 Arms Act. You have filed a Bail application No. 742/13 in the Court of Sessions Judge, Sambalpur for your release on bail. Hon"ble Court has fixed the date to 25.10.2013 for consideration of bail application and there is every likelihood of your release on bail. In the event of your release on bail you will again indulge yourself in heinous crimes and lawless activities affecting the public order which will be detrimental to the maintenance of public order. The copy of letter No. 3254/Sadar Court dtd. 22.10.2013 of the Court Asst. Sub-Inspector, Sambalpur addressed to S.P. Sambalpur and Bail Application No. 742/13 is enclosed as Annexure-J and J-1."

Similarly, the relevant paragraph of the report of the Superintendent of Police, Sambalpur is extracted below.

"At present he has been lodged in Circle Jail, Sambalpur being remanded in G.R. Case No. 1712/13 in the file of the Court of S.D.J.M., Sambalpur arising out of Khetrampur P.S. Case No. 123 dt. 22.08.2013 u/s. 394/307/34 IPC read with sec. 25 Arms Act. He has filed a Bail application vide No. 742/13 in the Court of Sessions Judge, Sambalpur for his release on bail. The Hon"ble Court has fixed 25.10.2013 for consideration of bail application and there is every likelihood of his being released on bail. In the event of his release on bail he will again indulge himself in heinous crimes and lawless activities affecting the public order which will be detrimental to the maintenance of public order. The copy of letter No. 3254/Sadar Court dtd. 22.10.2013 of the Court Asst. Sub-Inspector, Sambalpur address to S.P. Sambalpur and Bail Application No. 742/13 is enclosed as Annexure-J and J-1."

A portion of last paragraph of the grounds of detention is extracted below:

"Unless you are detained, there is every likelihood that you would continue to indulge in such activities prejudicial to the maintenance of public order as the normal laws of the land do not appear to have any impact on you..."

A portion of last paragraph of the report of the Superintendent of Police, Sambalpur reads thus:

"....Unless he is detained, there is every likelihood that he would continue to indulge in such activities prejudicial to the maintenance of public order as the normal laws of the land do not appear to have any impact on him."

8. To illustrate that the conduct of the detenu has been described in different words in 1st paragraph of both grounds of detention and report of

Superintendent of Police, it would be appropriate to reproduce here the first paragraph of both the "grounds of detention" and the "report of the Superintendent of Police", Sambalpur.

The first paragraph of the grounds of detention is quoted hereunder:

"You are a hardcore criminal and involved in a series of unlawful offence in Sambalpur town. You are a habitual offender and committed crimes in Sambalpur town by terrorizing the peace loving citizens. You have started your criminal activities since 2010 and committed crimes repeatedly one after one disregarding to the law of the land which creates fear in the mind of peace loving citizens of Sambalpur town and its adjacent areas. You have never refrained from your unlawful antisocial activities and terrorizing the peace loving citizens. Due to your propensity for murderous attack in public, a sense of fear has been installed in the minds of the people at large. Many such incidents of, murderous attack on public which have taken place in broad day light have gone unreported. No peace loving citizen dares to oppose you rather prefer to bow down silently to your illegal activities. The crimes committed by you are narrated below:"

The first paragraph of the report of the Superintendent of Police, Sambalpur is extracted below:

"One Md. Kadim aged about 21 years, S/o. Md. Jafar of Kumbharpada, P.S.-Town, Dist: Sambalpur has indulged in a series of criminal and antisocial activities since 2010. A large no of innocent people of different professions have become victims of his gruesome act. Dhanupali, Town and Khetrajpur P.Ss. of Sambalpur district have become his area of operation for unlawful activities like robbery, extortion, theft, dealing with stolen property, rioting and attempt on the life of the general public especially belonging to the traders and business class. He, with his gang members, has committed a series of crimes forming unlawful assemblies using fatal weapons in public view in broad day light in the most crowded and busiest places and close to educational institutions. He has attempted to take the lives of innocent people as hired "GOONDA". Due to his propensity for murderous attack in public, a sense of fear has been installed in the minds of people at large. Mere presence of Md. Kadim in a locality is sufficient for spreading the psychology of fear, panic and terror, among the general public many of his acts in broad day light have gone unreported. No peace loving citizens dares to show any type of resistance or oppose him preferring to bow down silently to his illegal activities.

A brief note of some of his reported antisocial/criminal activities resulting in frequent disruption of Public order are as under:"

9. The above facts clearly show that there is non-application of mind on the part of the detaining authority while passing the order/grounds of detention.

10. At this juncture, it would be beneficial to refer to the judgment of the Hon'ble Supreme Court in the case of Jai Singh and Others Vs. State of Jammu and Kashmir, wherein it is held as under:

"...Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, s/o. Ram Singh, resident of Village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner. We also notice that in the petition filed by the detenu, he had expressly alleged that he and the others had already been taken into custody in connection with a criminal case on July 6, 1984 itself and all of them were in custody since then. The detenu has given details of where he was taken and when. He has also referred to the circumstance that an application for bail was moved on his behalf on the eighteenth before the High Court and it was only thereafter that the order of detention was made. These facts have not been denied in the counter-affidavit filed by the respondents. In fact we are unable to find anything in the records produced before us, either in the police dossier submitted to the District Magistrate for action or in any other document forming part of the record that the District Magistrate was aware that the petitioner was already in custody. There is nothing to indicate that the District Magistrate applied his mind to the question whether an order of detention under the Jammu & Kashmir Safety Act was necessary despite the fact that the petitioner was already in custody in connection with the criminal case. The cases of the other six petitioners are identical and in the circumstances, we have no option, but to direct their release forthwith, unless they are wanted in connection with some other case or cases."

11. The principles decided in the above case are applicable to the present case.

12. In view of the above, the order of detention under Annexure-1 dated 24.10.2013 passed by the District Magistrate, Sambalpur directing detention of the petitioner-detenu, namely, Md. Kadim @ Md. Kadim Khan is quashed and the petitioner-detenu be set at liberty forthwith, if his detention is not required in connection with any other case.

13. In the result, the petition is allowed.

No order as to costs.

I. Mahanty, J.

I agree.