
(1975) 05 OHC CK 0002
In the Orissa High Court

Karunakar Nayak

APPELLANT

Vs

Sundargarh

RESPONDENT

Date of Decision : 16-05-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (1976) CriLJ 616

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

Bench : Division Bench

Judgement

R.N. Misra, J.—This is an application for a writ of habeas corpus directed against the order of detention passed by the District Magistrate, Sundargarh, on 16th January, 1975, in exercise of powers conferred on him u/s 3(2) (a) read with Section 3 (1) (a) (iii) of the Maintenance of Internal Security Act, 1971 (hereafter referred to as the "Act").

2. On 20th of January, 1975, petitioner was furnished the grounds of detention which read as follows:-

1. During investigation of K. Balang, P.S. Case No. 28 dated 19-5-1974, it has been ascertained that 624 pieces of electronic copper bars were loaded in Wagon No. 61114 on 5-3-1974 at Ghatsila I. C. C siding and was despatched from Ghatsila on 21-3-1974 by E/591 UP train." The wagon reached Jamshedpur in the same train in the same night from where it was dispatched by E/581 UP train on 24-3-1974. From both the stations the wagon bore label mark "Ghatsila to Katni", The wagon was received at Bandomunda along with 3 wagons meant for Katni on 26-3-1974. The other 3 wagons booked from Ghatsila were drawn out on 31-3-1974 and despatched to Katni on 1-4-1974, but wagon No. 61114 was brought to that line of the departure yard of Bandomunda which was meant for Rourkela on 28-3-1974 and was despatched to Rourkela by Rourkela Shuttle train on 2-4-1974 with a label "Kharagpur to Bmlftgarh". On 5-4-1974 the wagon was despatched to Bimlagarh where it reached the same day. The Station Master, Bimlagarh Railway Station received the wagon marked as load "Ex-

Kharagpur to Bimlagarh" and there was a paste-on label showing booking particulars as "Kharagpur to Bimlagarh1. Invoice No. 11 dated 7-3-1974 containing 602 bags". The Station Master had not received any letter regarding this consignment. On 13-5-1974, the R, P. F. staff opened the wagon and counted the copper bars. Before doing that the Assistant Security Officer, B. P. F., Sri Mukherjee examined the wagon on 13-5-1974 and found no seal on one side of the wagon. On opening the doors, the R, P. F. men found copper bars containing mark "I. C. C While counting the bars in the wagon, the R. P. F. party found a paste-on label lying inside the wagon with booking particulars as Ghatsila I. C. C. siding to Ordnance Factory siding, Katni, Invoice No. 10 R. R. No. 167064 dated 5-3-1974 containing 624 pieces of electronic copper bars". On physical checking 467 copper bars were found by the R. P. F. Party. 157 copper bars were thus missing. Under the personal supervision and direction of Sri Mukherjee the wagon was sealed and diverted and despatched to Rourkela for onward transmission to Katni (based on the supervision note of S. P. Sundargarh, in K. Balanga P.S. Case No. 28 dated 19-5-1974). Privilege is claimed over this document as its disclosure will be detrimental to public interest.

2. This wagon bearing No. 61114 was diverted to Bimlagarh through the connivance of you and others. You with the help of your gang members removed copper ingots from the said railway wagon and the stolen copper ingots were loaded in truck No. ORO 2259 driven by Kamaljit Singh. Thereafter the stolen properties were brought towards Rourkela for disposal. You masterminded the scheme and theft (copy of the statement of Sri Kedarnath Naik recorded u/s 164, Criminal Procedure Code by sub-divisional Judicial Magistrate, Uditnagar, on 27-12-1974 is enclosed -- Annexure "A"). Copy of the statement of Sri Ka-maljit Singh recorded u/s 164, Criminal Procedure Code by the Sub-Divisional Judicial Magistrate, Uditnagar, on 31-12-1974 is enclosed - Annexure "B".

3. In the month of April, 1974, you took one Suryarriani Jena to your gang and Suryamani Jena admits that after joining your gang he along with you and your gang have been breaking rail-way wagons at Bandomunda and stealing railway properties and disposing of such properties with different parties (based on the statement of Suryamani Jena, son of Anam Jena recorded on 6-1-1975 u/s 164, Criminal Procedure Code in the court of Sub-Divisional Judicial Magistrate, Uditnagar, Annexure "C"). From the aforesaid reason, I am satisfied that you have been causing disruption of the supplies and services essential to the community. I am, therefore, satisfied that it is necessary to detain you u/s 3 (1) (a) (iii) of Maintenance of Internal Security Act, 1971, with a view to preventing you from acting in any manner prejudicial to the maintenance of supplies and services essential to the community.

The State Government in due course confirmed the detention.

3. The petitioner challenges the order of detention on several grounds Mr. Mohanty. his counsel at the hearing of the application presses the following three points in support of petitioner's claim for quashing the order of detention:-

(i) The order of detention having been grounded on a single act, no prudent person could have come to the satisfaction that an order of detention was necessary.

(ii) The petitioner's act could be adequately dealt with by the criminal law of the land and did not warrant the extraordinary powers under the Act to be invoked.

(iii) Though the detaining authority has purported to act u/s 3 (1) (a) (iii) of the Act, the true ground of detention as disclosed in the order being defence of India it comes under Sub-clause (i) of Section 3 (1) (a). The order of detention, therefore, is vitiated.

4. The detaining authority has filed a counter-affidavit supporting the order of detention whereupon on behalf of the petitioner, a rejoinder has also been filed.

5. Before we refer to authorities cited by the parties before us, we think it appropriate to make an analysis of the factual aspects. Along with the grounds of detention, petitioner was furnished statements of three persons, namely, Kedarnath Naik, Kamaljit Singh and Suryamani Jena recorded u/s 164 of the Code of Criminal Procedure by the Sub-Divisional Judicial Magistrate of Uditnagar. The detaining authority has indicated in the grounds of detention that it took into account the facts stated in these statements.

In May, 1974, while K. Balang P.S. Case No. 28 was being investigated, it transpired that 624 pieces of electronic copper bars had been loaded into wagon No. 61114 on 5th March, 1974, at the siding of the Indian Copper Corporation at Ghatsila and the consignment was meant for the Ordnance Factory of the Defence Department at Katni. The wagon was despatched on 21-3-1974 to its destination by E/591 UP train. After the wagon reached Jamshedpur during the same night, it was attached to E/581 UP train on 24-3-1974 for onward transit. It was received at Bandomunda along with three other wagons meant for Katni on 26-3-1974. The other three wagons booked from Ghatsila were drawn out on 31-3-1974 and despatched to Katni on 1-4-1974, but wagon No. 61114 was brought to that line of the departure yard of Bandomunda which was meant for Rourkela on 28-3-1974 and attached to a Shuttle Train on 2-4-1974 with a changed label "Kharagpur to Bimlagarh". On 5-4-1974, the wagon was despatched to Bimlagarh and reached the destination the same day. The booking particulars were changed. The Station Master had not received any instructions regarding the consignment. On 13th of May, 1974, the Railway Protection Police Force staff opened the wagon and counted the contents. The wagon was found with no seal on one side and from within the wagon papers were found showing the mark "I. C. C The R. P. F. party found a paste-on label giving the true particulars. On counting, 157 copper bars were found to be missing.

6. Kedarnath Naik in his statement dated 27-12-1974 clearly stated that the detenu was the leader behind the theft and the scheme. Kamaljit Singh who was the driver of the truck ORO 2259 stated that his services were utilised for transporting the copper bars removed from the wagon. According to him, the

detenu is the owner of a hotel at Bisra Road. His statements clearly show that it is the detenu who was the leader of the entire arrangement. According to him, the detenu paid the transport charges. The third statement is of Surya-mani Jena, who was a rickshaw puller. He was persuaded to give up his job of rickshaw pulling and was told to join the gang on promise of sumptuous payment. He has stated:-

... At the Railway Yard, Bandomunda, we used to break open the seal and remove pig iron pieces etc., belonging to the Railway and supplying the same to Karunakar and his gang men. D. N. Singh, Banerjee, Bipin Mohanty and Prusty also are all working in the Railways used to inform Karunakar, Major Singh and others about the arrival of the Railway and defence properties in wagons. They also help in cutting the seal and removal of properties from the wagons. They often use the truck of Kamaljit Singh for this purpose. They supply these Railway properties to Ma-thur Factory at the Industrial Estate, Rourkela. Gidda, Modi, Bhuban also keep these stolen railway properties.

From these statements it clearly transpires that the removal of the copper bars was not a solitary act. A gang had been formed with the detenu as its leader and within the gang were included railway employees, several public officers and people of the locality - all under the leadership of the detenu and a systematic activity of wagon-breaking had been carried on. In the grounds furnished to petitioner, the detaining authority has stated that the detenu master-minded the scheme and theft in regard to the removal of copper bars. It has been further stated in paragraph 3 of the grounds that the detenu recruited Suryamani and the gang under the leadership of the detenu was engaged in wagon-breaking as a systematic activity,

7. Mr. Mohanty for the detenu relied upon some decisions of the Supreme Court where it has been observed that a single criminal act does not provide good foundation for an order of detention. Learned additional Government Advocate has also relied upon some decision in which single acts depending upon the seriousness of the activity and the gravity of the consequences have been accepted to provide good basis for sustaining orders of detention. In our view it is unnecessary to deal with these decisions, because factually the order of detention in this case is not grounded on a single, act. There is clear indication in the grounds that the detaining authority took into consideration the statements of the three persons already referred to and was satisfied that a Gang under the leadership of petitioner had been operating for quite some time and was regularly indulging in wagon breaking and removal of property from the custody of the Railway. There is no foundation in the first contention of the petitioner and the same must accordingly be rejected.

8. The second contention of the petitioner is that ordinary criminal law could adequately meet the situation and an order of detention was not necessary. This contention has also no basis because the facts show that a gang under the leadership of the petitioner has been indulging in systematic wagon-breaking. It

is not a single act and unless the mastermind behind the entire operation is detained there was clear apprehension of fresh wagon-breaking. The chain of activities could not be disrupted unless it was made physically impossible for the petitioner to master-mind one of the grave anti-social operations. A single criminal case on the basis of an event which has already taken place is not adequate to meet the situation which had presented itself in the facts of the matter. The second contention accordingly has also no basis.

9. Mr. Mohanty for the petitioner next alleged that the true ground of detention being that the petitioner was acting in a manner prejudicial to the security of India which is covered by Section 3 (1) (a) (i) of the Act, an order of detention under S. 3 (1) (a) (iii) could not be made (without) the satisfaction of the detaining authority. The petitioner has relied upon a decision of this Court in O. J. C. No. 75 of 1975 (Krushna Kumar Modi v. District Magistrate, Sundargarh), disposed of on 25th of February, 1975, (reported in Krushna Kumar Modi Vs. District magistrate, , wherein this aspect of the matter was dealt with and observations were made which support the petitioner's contention. As we find, the order of detention in that case is connected with the matter now before us. The detenu there, was one of the recipients of some of these stolen copper bars. In that case the grounds did not implicate the detenu with the continuous activity of wagon-breaking. The detenu in that case being only a receiver of stolen property was unconnected with the activity of the gang. Therein the grounds had been so stated that the order of detention indeed came only within Clause (a) (i) and not under Sub-clause (iii) of Section 3 (1) (a). In the present case, as we have stated, the facts bring the matter both under Sub-clause (i) as also Sub-clause (iii) and satisfaction of the detaining authority that the detenu was acting in any manner prejudicial to maintenance of supplies and services essential to the community cannot be said to be irrelevant. There is adequate material for such satisfaction of the detaining authority. The petitioner, therefore, is not entitled to rely upon what had been stated by us on the earlier occasion.

10. In the counter-affidavit, the detaining authority has categorically stated:-

.... From the recorded statement of Sri S. M. Jena I came to know that the petitioner had been breaking railway Wagons at Bandomunda and stealing railway properties and disposing of the said properties to different persons. From these facts, I was fully satisfied that the activities of the petitioner are grossly prejudicial to the maintenance of supplies and services essential to the community and, as such, I passed the impugned order of detention.

In paragraph 4, he further stated:-

.... At a point of time when copper of the specific variety stolen by the petitioner are not available in the market and are of great need, specially for the defence purposes, the fact that the petitioner got the particular wagon diverted and then with his gang members broke the wagon and got these copper ingots loaded into the truck and took them towards Rourkela for disposal is of such serious

amplitude that I, as the detaining authority, was firmly of the view that the petitioner cannot be let at large and must be prevented from acting in such manner in future and accordingly I issued the order of detention, It may be stated here that the statement of Sri S, M. Jena is indicative of the fact that breaking of wagons and stealing of railway properties is more or less a regular feature with the petitioner.

This assertion of the detaining authority in fact supports the order of detention under Sub-clause (iii) of Clause (a) of Section 3 (1) of the Act.

11. On the analysis made by us, we find it is unnecessary to refer to authorities cited at the Bar. The law on the question of detention under the Act has become almost settled by a series of decisions of the Supreme Court and we are satisfied that keeping in view the dicta indicated in those decisions, the order of detention is not open to attack.

12. We accordingly hold that the order of detention is not open to attack. The writ application stands dismissed.

B.K. Ray, J.

13. I agree.