
(1975) 02 OHC CK 0015
In the Orissa High Court

Krushna Kumar Modi

APPELLANT

Vs

District magistrate

RESPONDENT

Date of Decision : 25-02-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (1975) CriLJ 1179

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 challenging the order of detention passed by the District Magistrate, Sundargarh (Opposite Party) on 8th of January, 1975, in : exercise of powers vested in the detaining authority u/s 3 (2) (a) read with Section 3 (1) (a) (iii) of the Maintenance-of Internal Security Act, 1971 (hereinafter referred to as the "Act"),

2. On 11-1-1975, the following : ground was communicated to the detenu in support of the order of detention:

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 Janishedpur by the same train in the same night from where it, was despatched by R/581 Up Train on 24-3-1974. From both these stations the wagons bore label mark "Ghatsila to Katni". The wagon was received at Bondomunda along with 3 other 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 Bondomunda 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 "Kharag-pur-Bimlagarh". 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 Bimlagarh, 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, R. 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 marks "I. C. C.". While counting the bars in the wagon the R. P. F. party found paste-on 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 621 pieces of electronic copper bars. On physical checking 467 of 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 despatched to Rourkela for onward transmission to Katni (based on the supervision Note of S. P. Sundacgarh, in K. Balang P. S. Case No. 228 dated 19-5-1974. Privilege is claimed over the document as its disclosure will be detrimental to public interest).

Some time in April, 74, Sri Kamaljit Singh who drives truck No. ORO 2259, was engaged by Karunakar Naik to take his truck to Bimlagarh for bringing some materials. The Truck ORO 2259 driven by Sri Kamaljit Singh reached Bimlagarh in the night with about 30 persons including D. N. Singh and C. R. Banerjee, two train number-checkers of Bondomunda. On being directed, Kamaljit Singh took the truck near the Wagon No. 61114 standing in the Railway Station of Bimlagarh, About 100 pieces of copper bars were removed from the wagon by the Sang and D. N. Singh, C. R. Banerjee (the two train number-checkers) and one Bipin re-sealed the wagon. After about 100 pieces of copper bars were loaded in the truck. Kamaljit Singh brought the truck to Rourkela. 60 pieces of the copper bars were unloaded near Bank and 40 pieces Kamaljit Singh unloaded as per the direction of Karunakar Naik in your godown near Katcheri Road. Kamaljit Singh has unloaded the same in your presence and in the presence of another person (a Marwari) (Statements of Sri Kamaljit Singh recorded u/s 161, Criminal Procedure Code copy where of is enclosed as Annexure-A and statement of Kedarnath Naik recorded u/s 164, Criminal Procedure Code by S. D. J. M., Uditnagar Annexure-B).

Electronic copper bars are not available in the open market. The ingots received by you were meant for use for defence purposes and you by receiving some of these properties acted in a manner which disrupted maintenance of supplies and services essential to the community.

3. Petitioner filed this application on 15-1-1975 and alleged therein that he is an Engineering Graduate from the Sambalpur University, had a brilliant and meritorious academic career and after completing his studies has taken to business in electrical goods. On 23rd December, 1974, petitioner's business

premises were searched by the police on the basis of information given by accused Kamaljit Singh in K. Balanga P. S. Case No. 28 of 1974 u/s 379/411 I. P. C. but nothing was recovered. Petitioner being apprehensive that he might be harassed by the police applied for anticipatory bail and the learned Additional Sessions Judge, Sundargarh admitted him to anticipatory bail by order dated 3rd of January, 1975. On 5th of January, 1975, petitioner was arrested by the police on the plea that the case in which he was admitted to anticipatory bail was different from the case in which he was being taken into custody. On petitioner's application the learned Additional Sessions Judge released him on bail. Soon thereafter petitioner was taken into custody on 8th of January, 1975, on the authority of the impugned detention order.

The order of detention has been challenged on the following grounds:

(1) The detaining authority without application of his mind has been prevailed upon by the local police to append his signature to an order of detention. Therefore, the order is vitiated for want of satisfaction of the detaining authority that it is necessary to detain the petitioner.

(2) There is absolutely no material upon which any prudent person would come to the conclusion that detention is necessary.

(3) The ground of detention was not in existence by the time the order of detention was signed and served on the detenu. This allegation is made on the basis that on 9th of January, 1975, two Advocates on behalf of petitioner had called upon the detaining authority and he disclosed that grounds of detention had not yet been formulated.

(4) The statements of Kedarnath Naik and Kamaljit Singh furnished as Annexures to the ground of detention are contradictory in the matter of implicating the detenu and, therefore, could not be relied upon to support the order of detention. The charge in the ground at best showed commission of an offence punishable u/s 411 of the Indian Penal Code, and was thus an ordinary law and order problem which could be adequately dealt with under the common law and there was no justification to invoke the extraordinary powers of detention under the Act.

In the affidavit in reply to the counter-affidavit, it has been stated that the detenu made a representation on the 16th of January, 1975, to the Chief Minister and another on the 28th of January, 1975, addressed to the Home Department of the State Government. These remained undisposed of by the time the affidavit was filed on 7th of February, 1975, but Counsel for the detenu made a statement at the Bar during hearing of the application that the representations were rejected thereafter.

4. In the return made to the rule nisi, the detaining authority disputed the allegation that he had not applied his mind and had been made to sign the order of detention drafted by the police. He also claimed that the grant of anticipatory

bail had nothing to do with the matter of detention.

5. Mr. Raychoudhury for petitioner inter alia contended:

(1) The order of detention is vitiated as it does not show satisfaction of the detaining authority of the detenu's involvement in wagon breaking or the theft of the copper bars from the possession of the Railway. The solitary ground furnished in support of the order of detention does not warrant the detention of petitioner.

(2) The entire ground taken at the highest shows commission of an offence punishable u/s 411 of the Indian Penal Code, because the detenu has been alleged to have received stolen property. This single incident of a criminal offence could be adequately dealt with under the ordinary criminal law and there is no warrant for invoking the extraordinary provisions of the Act.

(3) On the facts disclosed, the appropriate provision under which the order could be made was Section 3 (1) (a) (i) of the Act and not Section 3 (1) (a) (iii) thereof. The order of detention is, therefore, vitiated.

We propose to deal with these contentions at length and would not refer to the various other contention, because it is conceded by counsel on either side that if any of these contentions succeeds, petitioner would be entitled to an order of release.

Contention No. 1,

6. The detaining authority in Annexure-3 has clearly indicated that the order of detention is founded upon one ground only. Paragraph 1 of Annexure-3 refers to the manner in which the wagon was way-laid. The second paragraph thereof deals at length with the manner in which 100 copper bars were loaded into Kamaljit Singh's truck bearing number ORO 2259. The facts stated in the ground indicate that there is a large scale conspiracy behind the theft of the 100 pieces of copper bars in which the R. P. F. men, the Station Staff, the Train number-checkers, some police people, one Karunakar Naik and many others are associated with this part of the story, the detenu's association has not been alleged. In a part of paragraph 2 of Annexure-3, it has been stated:

...60 pieces of the copper bars were unloaded near Banki and 40 pieces Kamaljit Singh unloaded as per the direction of Karunakar Naik in your godown near Kateheri road. Kamaljit. Singh has unloaded the same in your presence...

The unloading of sixty pieces of copper bars was thus under the directions of Karunakar Naik and the total allegation so far as the detenu is concerned is that the unloading was in the detenu's go-down in his presence. Counsel for petitioner relies upon the two statements enclosed to the ground of detention-one is of Kamaljit Singh recorded u/s 161 of the Code of Criminal Procedure and the other is a statement of one Kedamath Naik recorded under Sections 164 of the Code of Criminal Procedure. Kamaljit had stated that one Marwari staying in

front of Gupta Transport came-and talked with Kunja. Kunja, the Marwari and two others talked among themselves and directing that the ingots be unloaded in the Modi godown went away. One of these persons was the detenu. Kedarnath in his statement u/s 164 of the Code of Criminal Procedure has stated:

...The truck went to Mangal Bhawan to a red building. The property was unloaded there. The property was kept with one Darghai Sahu of Rourkela. It was then sent to Calcutta...

Karunakar Naik is the leader behind this theft and scheme. The R. P. F. company commander Sardar is also aware of this incident....

The information which led to the passing-of the order of detention obviously came to the notice of the detaining authority from these two statements. These statements are to a considerable extent contradictory so far as they relate to the detenu. Who actually directed Kamaljit to unload in the godown the forty pieces of copper bars is not clear from Kamaljit's statement. Kedarnath does not at all refer to the godown of the detenu, It is nobody's case that the red building in Manjjal Bhawan is the detenu's godown.

7. We are alive to the position that the satisfaction of the detaining authority is subjective and is not liable to objective tests. Again, the detaining authority cannot be called upon to support the order of detention by evidence. That is the marked distinction between a criminal trial and the making of an order of detention. But the material upon which the detaining authority proceeds to form his satisfaction must be relevant, germane and must contain certain elements relying upon which any prudent man would be able to form the opinion that in a given case the extraordinary power is required to be exercised resulting in an order of detention. When this basic minimum is non-existent, certainly a case for striking down the order of detention is made out.

7A. We have already stated that in the ground of detention, petitioner's complicity at any earlier point is not alleged. It would, therefore, follow that the detaining authority had no occasion to be satisfied that the detenu had any connection with the wagon-breaking or theft. Kedarnath Naik's statement u/s 164 of the Code of Criminal Procedure clearly shows that Karunakar is the leader behind the theft and the scheme. We think there is force in Mr. Raychoudhury's contention that the materials disclosed in the ground and contained in the accompanying documents could not lead any reasonable man to reach the conclusion that an order of detention became necessary.

Contention No. 2,

8. We proceed to examine the next contention of Mr. Raychoudhury, namely that accepting the entire allegation to be correct (which in a case of this type we are obliged to) a case punishable u/s 411 of the Indian Penal Code is made out and, therefore, the situation could be appropriately dealt with under the ordinary criminal law and did not justify an order of detention. The allegation laid down in

the ground as already dealt with shows complicity of the detenu at the point of receipt of stolen property. Law is fairly settled that where the facts disclose that an offence of the ordinary type open to be dealt with by the criminal law of the land has been committed, the extraordinary power vested u/s 3 of the Act is not to be invoked.

9. Learned Additional Government Advocate, however, relied upon the case of Madhab Roy alias Madha Roy Vs. State of West Bengal, , where an isolated instance of theft of copper return feeder wire was held to justify an order of detention. In paragraph 2 of the judgment, it has been said:

...This incident must be judged in its correct setting, grave proportions and clear implications. It must be noticed that this was not an ordinary incident of theft of wheat, rice or jute bags. It was a daring act of robbery of copper return feeder wire of railway tractions which resulted in the death of one of the associates of the petitioner, by electrocution and brought about serious disruption of the railway services. Now, cutting and removal of copper return feeder wire of railway traction is a sophisticated and complex operation which requires technical skill and expertise and is not the work of a layman or a novice. It postulates experience acquired as a result of a course of such or similar activities and also suggests that it is a part of an organised activity of "a complex of agencies collaborating to remove, secrete and sell" such stolen goods. This activity has very serious and disturbing consequences and it can well be part of a plan of sabotage which brings to a grinding halt the movement of trains. Therefore, it is obvious that though the incident referred to in the communication served on the petitioner is a single solitary incident, it cannot be looked upon as an isolated act. It necessarily connotes a course of previous conduct of such or similar activities where specialised experience has been acquired and specialised kind of mischief has been planned to be perpetrated. The allegation that the petitioner was one of the notorious anti-social elements indulging in committing theft of copper feeder wires from railway tractions is, therefore, really nothing but an elaboration of what is already implied in "the apparently single solitary incident communicated to the petitioner....

The learned Judges quoted with approval a brief passage from the case of Anil Dey Vs. State of West Bengal, where it was said:

the very proficiency and daring displayed by the petitioner, with his associates, in doing what he did, amounts to the attribution of a series of activities.

Though the ground indicated was singular, in the facts of the case, the court accepted the contention that the detenu was associated with organised activity of a complex of agencies collaborating to do the prejudicial activity. Otherwise, on the accepted position that a single offence of the ordinary, type punishable under the criminal law of the land would not justify action under the special statute could have been applied.

As we have already stated, the entire complicity of the detenu in this case is

only at the point of receiving the alleged stolen Roods. Therefore, there is no scope for finding support from the decision of the Supreme Court in the case of Madhab Roy.

10. Where there is a continuous chain of activities, the detaining authority is free to fall back upon the presumption of repetition of such conduct. In the case of Malwa Shaw Vs. The State of West Bengal, , Bhagwati, J., speaking for the court said thus:

...The satisfaction which the District Magistrate is required to reach in order to support the order of detention is that it is necessary to detain the petitioner with a view to preventing him from acting in a particular manner and that satisfaction can obviously be founded only on a reasonably anticipated prognosis of future behaviour of the petitioner made on the basis of past incidents....

In Malwa Shaw Vs. The State of West Bengal, , there were three incidents in quick succession in the month of October, 1971. Keeping the repetitions of prejudicial activity in quick succession in view, in terms of the decision of the Supreme Court, the detaining authority had occasion to be satisfied that there was possibility of repetition of prejudicial activity in future. In the instant case before us, there is a solitary act and this unconnected event certainly could afford no guideline for reasonably anticipated prognosis of future behaviour of the detenu, We are, therefore, prepared to accept this contention of Mr. Raychoudhury. On this ground alone, the order of detention was not justified.

Contention No. 3.

11. The last contention with which we intend to deal is based upon the provisions of Section 3 (1) (a) (i) and (iii) of the Act. As far as material, those provisions are as quoted below:

3. (1) The Central Government or the State Government may-

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to-

(i) the defence of India, the relation of India with foreign powers, or the security of India, or

(ii).... ..

(iii) the maintenance of supplies and services, essential to the community, or

(b)... It is necessary so to do, make an order directing that such person be detained.

The facts alleged in this case are that the copper bars are not available in the open market. These were being taken from the Indian Copper Corporation at Ghatsila to Katni Ordnance factory of the Defence Department. We are told by the counsel for the detaining authority that these are necessary for making sophisticated defence apparatus including ammunition, The third paragraph of

the ground makes reference to this position. That being the case, the Impugned activity was certainly prejudicial to the Defence of India or the security of India, which is a matter covered under Sub-clause (1). It is difficult for us to appreciate as to why the detaining authority came to the conclusion that this was prejudicial to the maintenance of supplies and services essential to the community. Learned Additional Government Advocate strenuously argued that Defence of India was essential to the community and it was necessary that the supply-line for Defence purposes had to be maintained. Therefore, the detaining authority was free to reach his satisfaction even in terms of Sub-clause (iii). We do not think, the stand of the learned Additional Government Advocate is justified. There could be no dispute that Defence of India is essential to the community, but the true scope of Sub-clause (iii) is not what is covered by Sub-clause (i). Obviously, Parliament has intended different situations to be covered by the three sub-clauses and though there may be overlapping in some cases, there is no justification for the contention that the same situation is intended to be covered by these three sub-clauses. When power is available to be exercised under a direct provision, it necessarily postulates exercise of that power by invoking that process and not a collateral one. It is more so, where wide powers are conferred and the satisfaction of the detaining authority is made immune from challenge in Court. In the facts of the case, the order of detention could appropriately be made only under Sub-clause (i) and the fact that the detaining authority resorted to Sub-clause (iii) throws considerable doubt in our mind whether the detaining authority's mind had been properly applied to the entire matter when the order of detention in this case was made.

12. As we have already said, several contentions have been raised in the writ application and also at the time of hearing of this application. But we have not dealt with them, as in our view, our conclusions on these three points are sufficient to dispose of this application. For the reasons indicated, we allow this application, quash the order of detention and direct that the detenu be set at liberty forthwith.

B.K. Ray, J.

13. I agree.