
(2013) 07 OHC CK 0067

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 1339 of 2012

Kutuli @ Iswar Naik

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 116 CLT 862 : (2013) 2 OLR 473

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

Bench : Division Bench

Advocate : Jugala Kishore Panda and D.R. Nanda, for the Appellant; S.D. Das, Asst. Solicitor General of India for Opp. Party No. 3, for the Respondent

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The present writ application seeking writ of habeas corpus has been filed by the petitioner-Kutuli @ Iswar Naik challenging the legality of his detention u/s 3(2) of the National Security Act, 1980. Learned counsel for the petitioner asserts that the District Magistrate, Ganjam (opposite party No. 2) in exercise of the power u/s 3(2) of the aforesaid Act has passed the order of detention dated 26.08.2012 and such order was served on the detainee while he was in judicial custody in some other criminal case.

He submits that on a plain reading of the impugned order of detention, the authorities purportedly in order to prevent the detainee from acting in any manner prejudicial to the maintenance of public order, passed the impugned detention order u/s 3(2) of the Act. He further submits that although the order of detention indicates that the same has been passed in order to, prevent the detainee from acting in any manner prejudicial to the maintenance of public order yet, in the said order there is absolutely no disclosure as to how any act or any omission on the part of the detainee has in any manner affected the tempo of public life in any area. Further it is asserted that none of the instances cited in the detention order, can be said to be prejudicial to the maintenance of public order. It is further asserted that the fact that the petitioner has been detained in

some other criminal cases, cannot and does not provide any legally justifiable grounds to detain, a person under the National Security Act. It is asserted that none of the criminal cases can be treated as being against the public at large and, therefore, prejudicial to the public order.

Learned counsel for the petitioner further asserts that the State Government failed to apply its mind to the representation of the petitioner and the materials available on record and mechanically approved the detention order vide its order dated 3.9.2012. It is further averred that the petitioner-detenu submitted a representation before the Board on 22.10.2012 and although opportunity of hearing was granted, to the petitioner in support of his representation, it is alleged that the Advisory Board has confirmed the order of detention of the petitioner and directed the detention of the petitioner for twelve months vide order dated 8.10.2012.

2. Challenging the order of detention and confirmation by the State as well as rejection of the detenu's representation by the Advisory Board, the present writ application came to be filed.

3. Learned counsel for the petitioner asserts that the grounds of detention merely indicate that the detaining authority was apprehensive that in case the petitioner is released on bail, he would again carry on criminal activities and based on such apprehension, passed the detention order. It is asserted that such detention of the petitioner is in violation of the judgment of the Hon'ble Supreme Court in the case of Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, Reliance was also placed on the judgment of this Court in the case of Pradeep Sahu Vs. Union of India,

It is further submitted on behalf of the petitioner that the detention ought to be declared to be illegal also on the ground that there is delay in disposal of the representation by the State Government and Central Government for which, the detention order was liable to be quashed.

4. Learned counsel for the petitioner submits that from the grounds of detention, it appears that the detaining authority has taken into consideration twelve cases mentioned in the order of detention which are noted below:

(i) Aska P.S. Case No. 56/2000 dated 11.04.2000 under Sections 395 IPC/.9(1-B)I.E./25A Arms Act-Judgment dated 22.3.2003 passed by the learned Assistant Sessions Judge, Aska (Annexure-6) acquitting the accused persons.

(ii) Aska P.S. Case No. 128/2000 - Pending for trial.

(iii) Aska P.S. Case No. 153/2000 - acquitted by judgment dated 29.9.2003 passed by the learned Asst. Sessions Judge, Aska in Sessions Case No. 34/2001 (Annexure-7)

(iv) Aska P.S. Case No. 174/2008, corresponding to S.T. Case No. 28/2011 - acquitted vide judgment dated 06.08.2012 passed by the learned Ad hoc Addl.

Sessions Judge (FTC), Aska (Annexure-8).

(v) Aska P.S. Case No. 176/2008 dated 10.7.2008 under Sections 302/120B/34 IPC & 25/27 Arms Act - pending for trial.

(vi) Aska P.S. Case No. 7/2009 - pending for trial.

(vii) Aska P.S. Case No. 162/2010 - corresponding to S.T.. Case No. 14/2011 - acquitted vide judgment dated 23.11.2012 passed by the learned Ad hoc Addl. Sessions Judge (FTC), Aska (Annexure-9).

(viii) Aska P.S. Case No. 129/2012 - pending for under investigation.

(ix) Bhanjanagar P.S. Station Diary Entry Nos. 382 and 384 dated 15.7.2012.

(x) Kabisuryanagar P.S. Station Diary Entry Nos. 477 and 481 dated 21.7.2012.

(xi) Kabisuryanagar P.S. Station Diary Entry Nos. 523 and 526 dated 23.7.2012.

(xii) Aska P.S. Station Diary Entry Nos. 286 and 291 of 2012 dated 17.7/2012.

5. Learned Addl. Government Advocate for the State was directed to verify the aforesaid averments made by the petitioner in paragraph-14 of the writ application and on instructions, learned counsel for the State affirmed the aforesaid facts.

6. On consideration of the various cases noted hereinabove, it appears that out of 12 cases mentioned hereinabove, while cases at Serial Nos. (i), (iii), (iv) and (vii) the petitioner has been acquitted. Insofar as the case at Serial No. (viii) is concerned, investigation is pending before the police and Serial Nos. (ii), (v) and (vi), trials are pending and insofar as cases at Serial Nos. (ix), (x), (xi) & (xii) are concerned, are referred to Station Diary Entries at various Police Stations, where investigations are yet to be concluded and no FIR has yet been registered. In view of the aforesaid facts situation as appears from the materials relied upon by the petitioner and on perusal of the grounds of detention, we are of the considered view that the instances cited do not make out a case of disturbance of public order and in view of the dicta of the Hon'ble Supreme Court in the case of Yumman Ongbi Lembi Liema (supra) as well as of this Court in the case of Pradeep Sahu (supra), the order of detention dated 25.8.2012 under Annexure-1, confirmation of the same vide order dated 08.10.2012 under Annexure-5 and rejection of the representation by the Authorized Committee dated 11.03.2013 are hereby quashed. The petitioner be set at liberty forthwith provided his detention is not required in any other case.

B.N. Mahapatra, J.

I agree.