
(2006) 09 OHC CK 0029

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 66 of 2006

Logen Kumar Samal ' Bhalu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 3
National Security Act, 1980 — Section 13(1), 14, 3(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2007) CLT 152 (Suppl CrI) : (2006) 2 OLR 620

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Advocate : Debasis Sarangi, for the Appellant; A.G.A. (for O.Ps. 1 and 2) and J.K. Mishra, Assistant Solicitor General (for O.P. No. 3), for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—In this Habeas Corpus petition under Article 226 of the Constitution of India, the petitioner-detenu challenges the order of detention dated 20.10.2005 issued by the District Magistrate, Ganjam, Chatrapur u/s 3(2) of the National Security Act, 1980 (for short, "the Act") as illegal and unsustainable.

2. The order of detention dated 20.10.2005 was served on the petitioner-detenu on 21.10.2005 when he was in custody in the Circle Jail, Berhampur in connection with some police case along with grounds of detention. The petitioner-detenu was also informed that he has a right to file representation before the State Government, the Advisory Board and the Central Government u/s 14 of the Act. Accordingly, the petitioner-detenu made representation to the State Government which was rejected by it (State Government) by order dated 28.11.2005. The Central Government receiving the representation on 6.12.2005 rejected the same by its order dated 16.12.2005 and the order of detention was confirmed by the State Government u/s 13(1) of the Act on 12-12.2005.

3. The order of detention is challenged by the petitioner detenu on the ground that the said order has been passed by the detaining authority without application of mind and further the criminal cases on which the said order is based are stale cases. The order of detention dated 20.10.2005 reads as follows:

OFFICE OF THE DISTRICT MAGISTRATE : GANJAM CHATRAPUR N.S.A. No. 5/2005. ORDER

No.964/Res. Dt.20.10.2005 WHEREAS, I Shri, Sanjay Kumar Singh, I.A.S., District, Magistrate, Ganjam have been directed in Government of Orissa, Home Department Order No. 3754/C. Dt. 14.9.2005 to exercise the power conferred by Sub-section (2) of Section 3 of the National Security Act, 1980.

WHEREAS, I am satisfied that with a view to preventing Sri Logen Kumar Samal " Bhalu aged about 26 years, S/O. late Satyananda Samal of Sriramnagar, Jagarnathvihar 6th line P.S. Badbazar Dist. Ganjam from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order;

Now therefore, in exercise of powers conferred by Sub-section (2) of Section 3 of the National Security Act, 1980, I do hereby direct that the said Logen Kumar Samal " Bhalu who is now in intermediate judicial custody in circle jail, Berhampur vide Badbazar P.S. Case No. 237 dt.6.10.2005 u/s 387/34/IPC/7 Cr.L.A. Act (G.R. 1510/2005) be detained in the circle jail Berhampur until further orders.

Sd/-S.K. Singh District Magistrate, Ganjam, Chatrapur.

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4. On perusal of the grounds of detention dated 21.10.2005 annexed to the writ petition as Annexure-2 series, it transpires that the petitioner-detenu was previously detained thrice under the Act in the year, 1999, 2001 and 2004. It further transpires that the petitioner-detenu was convicted to undergo R.I. for seven years under Sections 452/294/354/323/506/387/34 I.P.C. in Badbazar P.S. Case No. 26 dated 5.3.2004 against which the petitioner-detenu preferred Criminal Appeal No. 4 of 2005 and was released on bail on 2.3.2005. The petitioner-detenu was subsequently booked in Badbazar P.S. Case No. 118 dated 18.5.2005 under Sections 147/148/294/307/149 I.P.C. read with Section 3 of E.S. Act and during the course of investigation of the said case, several incriminating materials were seized and sent to the Regional Forensic Science Laboratory, Berhampur and ultimately a charge sheet was filed under the above sections against the petitioner-detenu. The petitioner-detenu was also involved in Badbazar P.S. Case No. 26 of 2004 and other criminal cases, the lists of which were mentioned in the grounds of detention.

5. Mr. D. Sarangi, learned Counsel for the petitioner-detenu vehemently urged that the grounds of detention being a verbatim reproduction of the report of the Superintendent of Police, Berhampur, submitted to the District Magistrate,

Ganjam, Chatrapur, it ex-facie discloses non-application of mind on the part of the detaining authority, i.e. the District Magistrate, Ganjam, Chatrapur. The said report of the Superintendent of Police, Berhampur has been annexed as enclosure to the Annexure-2 series to the writ petition. On comparing the same, this Court is of the view that the contention raised by the learned Counsel for the petitioner-detenu is correct. As a matter of fact, the grounds of detention appears to be an exact copy of the report of the Superintendent of Police, Berhampur submitted before the detaining authority except changes being made in the tense of the verbs and addressing the petitioner-detenu as "you" instead of stating his name as was done in the report of the Superintendent of Police.

6. Learned Counsel for the State, on the contrary, submitted that the petitioner-detenu's involvement in various criminal cases justifies his detention. Though the petitioner-detenu was in custody on the date when the order of detention was served on him, since he was granted bail in other criminal cases it was correctly anticipated that the petitioner-detenu might be released on bail and will again resort to criminal acts. He further submitted that the detaining authority was subjectively satisfied before passing the order of detention as the detention of the petitioner-detenu was necessary in view of the fact that the petitioner-detenu was repeatedly committing criminal acts in such manner which is prejudicial to the maintenance of public order.

7. In support of his contention that there is non-application of mind on the part of the detaining authority in passing the order of detention, Mr. Sarangi, learned Counsel for the petitioner - detenu relied upon the decision of the Supreme Court in the case of Jai Singh and Others Vs. State of Jammu and Kashmir, . In the said case (Jai Singh and others (supra), the Supreme Court was dealing with an order of detention passed under the Jammu & Kashmir Public Safety Act, 1978. While considering the facts of the said case, the Supreme Court held as follows:

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 Jaisingh, s/o. Ram Singh, resident of village Bharaoh, 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 18th 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 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.

Mr. Sarangi also drew the attention of this Court to the decision of the Division Bench of the Allahabad High Court in the case of Tunnu v. Superintendent, District Jail, Ballia and Ors. 2000 (2) Crimes, 418 and submitted that following the decision of the Supreme Court in the case of Jai Singh and others (supra), the Allahabad High Court under similar situation as in the present case, held that there was non-application of mind on the part of the detaining authority in passing the order of detention. We have perused the said decision and we find the same to be in support of the contention raised by Mr. Sarangi, learned Counsel for the petitioner-detenu. Mr. Sarangi further submitted that the detention order cannot also be sustained for the delay on the part of the State Government in forwarding the representation of the petitioner-detenu to the Central Government for an unduly long period of 22 days. From the facts of the case, it is revealed that the petitioner-detenu made the representation on 15.11.2005 whereas the same was rejected by the Central Government on 6.12.2005.

8. A counter affidavit has been filed by the detaining authority, i.e., District Magistrate, Ganjam, Chatrapur. On perusal of the same, it appears that the said counter affidavit is conspicuously silent on the date on which the representation of the petitioner-detenu was forwarded to the Central Government. However, it has been stated in the said counter affidavit that by letter dated 20.12.2005, the Central Government intimated the petitioner-detenu that his representation has been rejected. Admittedly, therefore, there is a delay in sending the representation of the petitioner-detenu to the Central Government on the part to the State Government which is about 22 days as asserted in the writ petition.

9. This Court in the case of Shanina Begum v. State of Orissa and Ors. 2000 (2) Crimes 424 OR relying upon various other decisions of this Court as well as the Supreme Court, in the facts of the said case, held that a delay of 18 days in forwarding the representation to the Central Government by the State Government is an undue delay which vitiates the order of detention.

10. For the sake of brevity, we do not feel it necessary to refer to the other decisions cited by the learned Counsel for the petitioner-detenu.

11. Applying the ratio of the aforesaid decisions cited at the Bar, we are satisfied that the order of detention dated 20.10.2005 vide Annexure-1 is not sustainable

as the grounds of detention clearly show non-application of mind on the part of the detaining authority as well as there is undue delay in forwarding the representation of the petitioner-detenu to the Central Government by the State Government.

12. In the result, the order of detention dated 20.10.2005 under Annexure-1 passed by the District Magistrate, Ganjam, Chatrapur against the petitioner-detenu-Logen Kumar Samal " Bhalu, is quashed and the writ petition is allowed. The petitioner-detenu-Logen Kumar Samal " Bhalu be set at liberty forthwith if his detention is not required in connection with any other case.

B.P. Das, J.

13. I agree.