
(2005) 03 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 146 of 2004

Logen Kumar Samal ' Bhalu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

National Security Act, 1980 — Section 12(1), 14, 3(2)
Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 354

Citation : (2005) 100 CLT 142 : (2005) OLR 564 Supp

Hon'ble Judges : P.K. Mohanty, J; J.P. Mishra, J

Bench : Division Bench

Advocate : Debasis Sarangi, for the Appellant; Debasis Das, A.G.A. and Anil Deo, A.S.C. (Central), for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mishra, J.—The detenu Logen Kumar Samal alias Bhalu calls in question the detention order dated 17.3.2004 passed in N.S.A. Case No. 2 of 2004 (Annexure-5), order dated 22.3.2004 (Anenxure-3) and the order dated 30.4.2004 (Anenxure-4) along with the order of rejection of the Central Government.

2. The case of the petitioner is that he was remanded to custody in connection with Bada Bazar P.S. Case No. 26 dated 5.3.2004 u/s 452/294/341/354/323/506/387/34, IPC corresponding to G.R. Case No. 183/04 on 10.3.2004 vide the order of the S.D.J.M., Berhampur. While in Berhampur Jail, the order of detention was communicated to him on 18.3.2004 and the same was approved by the appropriate government (State Government) on 22.3.2004 under Anenxure-3. The Advisory Board also found sufficient cause for his detention and confirmed the order u/s 12(1) of the N.S.A. Act on 30.4.2004. His representation met the same fate by the Central Government and the order was communicated to him by the Central Government (Opp. Party No. 3) on 6.7.2004.

3. Opp. Parties 1 and 2 filed counter affidavit in support of the order of detention

mentioning therein that the petitioner applied for bail before the Learned S.D.J.M., Berhampur, in G. R. Case No. 183/04 for which apprehending his release and to prevent him from further indulgence in disturbing the public order, the order of detention was passed.

4. Opp. Party No. 3 (Central Government) has also filed counter affidavit mentioning the communication of the order of rejection of the Central Government to the detenu vide Annexure-C.A.I. According to the Central Government, there is no time limit for consideration of the representation of the detenu by the Central Government in deciding/ disposing the representation u/s 14 of the N.S.A. Act.

5. Learned Counsel for the petitioner has assailed the order of detention on the ground of non-application of mind of the detaining authority and submits that there was no necessity for the order of detention as the petitioner was already in judicial custody on the date of the detention order dated 17.3.2004. According to the Learned Counsel it is nowhere averred that the petitioner was likely to be released soon and indulge himself in the activity prejudicial to the public order. It is next contended that the alleged activities do not amount to disturbance of public order but, if accepted, it is a case of simple law and order and, therefore, prays to issue Writ of habeas corpus in his favour.

6. Learned Addl. Standing Counsel (Central) and Learned Addl. Government Advocate repelled the contention pointing out Annexure-5 as well as the affidavit of Opp. Parties 1 and 2 that the detaining authority was quite aware of the judicial custody of the petitioner while passing the order date 17.3.2004 and the order was passed only to protect the tranquility of the society. In reply to the second contention, Learned Counsel for the State submits that the petitioner is in habit of creating terror in the city of Berhampur since the age of 18 and continuously disturbing the tranquility of the society. According to him, the common law could not prevent the petitioner indulging in threatening of public peace and deserves to be detained in custody under the N.S.A. Act. Learned Counsel has taken us to the various parts of the affidavits showing the continuous involvement of the petitioner in terrorizing the common people.

7. Learned Counsel for the petitioner has mainly relied on a decision of the Apex Court in *Biru Mahato Vs. District Magistrate Dhanbad*, ; wherein the detenu was released on the basis of the argument advanced by the counsel only for the reason of non-acceptance of the affidavit filed by the detaining authority. The principle laid down in the case is that the detention order or the affidavit must show justifying the detention along with the awareness of the appropriate Government while passing such an order especially when the detenu was already in judicial custody.

8. There is no quarrel over the proposition of law laid down in the decision relied by the Learned Counsel for the petitioner. In the reported case, the petitioner asserted non application of mind by the detaining authority. An affidavit was filed

by one J.S. Vera describing himself as the District Magistrate of Dhanbad, whereas one Shri D. Nand Kumar had signed the detention order as District Magistrate. Therefore, the counter affidavit filed by an unauthorised person claiming himself to be detaining authority was completely ignored. Therefore, the detenu was released accepting his ascertain in the affidavit.

9. In the case in hands, admittedly, the petitioner was taken to custody in G. R. Case No. 183/04. The order of detention (Annexure-5) is quoted below :

"Whereas I shri Sanjeeb Kumar Mishra, I.A.S., District Magistrate, Ganjam have been directed in Government of Orissa, Home Department Order No. 6654/C., dt. 15.12.2003 to exercise the powers 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 26 years, S/o Late Satyananda Samal of Sriramnagar Jagannath Vihar 6th Line, P.S. Bada Bazar, Berhampur, District 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 Bada Bazar P.S. Case No. 26, dtd. 5.3.04 under Sections 452/294/341/354/323/506/387/34, IPC (GR-183/2004) be detained in the Circle Jail, Berhampur until further orders.

Sd/ Illegible District Magistrate Ganjam, Chatrapur."

The aforesaid order passed on 17.3.2004 clearly shows that the detaining authority was very much aware of the intermediate judicial custody of the petitioner in the Circle Jail, Berhampur in G.R. Case No. 183/04. The affidavit of Opp. Party No. 1, reveals in paragraph 5 that the appropriate Government was very much conscious of the detention of the petitioner in connection with G. R. Case No. 183/04 while passing the order of detention u/s 3(2) of the N.S.A. Act. It has also been mentioned that the petitioner had applied for bail in the Court of the Learned S.D.J.M., Berhampur. It is only to prevent the petitioner from disturbing the public order; the order of detention was passed.

10. In the case of Yasobanta Sahu alias Yasobanta Kumar Sahu v. State of Orissa, 1997 (II) OLR 391, this Court observed that the subjective satisfaction of the detaining authority gets vitiated in case of suppression of vital facts bearing on the satisfaction of the detaining authority while passing the order. In the said case, acquittal of the detenu in certain G. R. Case was not placed before the detaining authority. It was also observed that each case is to be examined on the basis of the facts available. Since the detention order of the District Magistrate dated 17.3.2004 clearly depicts the consciousness of judicial custody of the petitioner at the time of passing the detention order so also his affidavit, the

order of detention cannot be vitiated.

11. This brings us to the second limb of the submission. It is well known that the public order is something more than the ordinary maintenance of law and order. The test is to be adopted in determining whether an act affects law and order or public order and as to whether the current life of the community is affected by the activities of the detenu or it affects merely to an individual living tranquility of the society undisturbed. The matter has already been thoroughly discussed in the case of *Tilotama Parida v. State of Orissa* (1997) 13 OCR 377. The point raised was also discussed by the Apex Court in *Kamarunnissa and Others Vs. Union of India* and another, and the following principles emerged :

(a) If the authority passing the order is aware of the fact that the detenu is in custody;

(b) if the authority has reason to believe on the basis of the materials placed before him; and

(c) if it is essential to detain him to prevent him from his activities prejudicial to the public order.

It has been mentioned in Annexure-2 that the detenu was involved in crimes since attaining the age of 18 along with relations Dharanidhar Samal and Raju Mohanty who were involved in cases under the Arms and Explosive Substances Act and people started fearing the detenu due to hurling of bombs in the city. He was detained under the N.S.A. Act by the appropriate Government on 5.8.1999 and was released on 10.8.2000. After he was released, his activities continued and he was lodged in the jail again under the N.S.A. Act on 23.7.2001 to be released on 7.6.2003. But, he continued to involve himself with his associates on 30.11.2003 in hurling of bombs to kill one Chicken Rabi in the R.D.C. colony at 8 A.M. creating panic in the street and the road became blank even in busy hours of the city. The recent activities of the petitioner was of dated 6.3.2004 when he along the associates in the broad day light at 1 P.M. entered into a Bakery shop with deadly weapons and looted bakery articles. All the shops of the locality were closed for the same incident and S.D.E. No. 138, dated 6.3.2004 was lodged at Bada Bazar P.S., Berhampur. On the next date also (7.3.2004), the petitioner along with his associates hostaged a Youth at Sriramnagar Cremation Ground and was preparing bombs to attack someone. The information was incorporated in S.D.E. No. 166, dated 7.3.2004 of Bada Bazar P.S. On 8.3.2004, he also collected Dada Mamuli from Giri Market at the point of the daggers and the market place became deserted due to the activities of the petitioner. The report was again recorded in Bada Bazar Town P.S. in S.D.E. No. 234, dated 8.3.2004. It has been mentioned in paragraph-11 of the affidavit of Opp. Party No. 1 regarding the recent incident showing the proximity to the order of detention. The apprehension of obtaining an order of bail in P.S. Case No. 26, dated 5.3.2004 is very much there in paragraphs-4 and 5. According to the District Magistrate, Ganjam keeping in view of the past criminal activities, the order of

detention was passed and the same was communicated to the petitioner in time as required under law. Further, the record reveals that the witnesses were not deposing against the petitioner being terror stricken in criminal case resulting in his acquittal. So, on the whole, taking the entire circumstances of the case, we are of the considered opinion that the activities of the detenu are prejudicial to the public order and the contention of the learned Counsel for the petitioner fails.

In the result, we dismiss the Writ Application.

P.K. Mohanty, J.

12. I agree.