
(2012) 01 OHC CK 0019
In the Orissa High Court
Case No : W. P. (Criminal) No. 1223 of 2011

Md. Samsher

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Arms Act, 1959 — Section 25, 27
National Security Act, 1980 — Section 13, 3
Penal Code, 1860 (IPC) — Section 109, 147, 148, 149, 294

Citation : (2012) CriLJ 2111

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Advocate : B.K. Ragada, L.N. Patel, N.K. Das, for the Appellant; D.K. Mishra, Addl. Gov. Advocate (for Nos. 1 and 2) and S.D. Das, Asst. Solicitor General of India (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails his detention in custody in pursuance of an order dated 3-9-2011 passed by the District Magistrate & Collector, Sambalpur under sub-section (2) of Section 3 of the National Security Act, 1980. From the averments made in the writ application and the documents attached to it, it appears that the District Magistrate and Collector, Sambalpur passed an order on 3-9-2011 in Annexure-1 under sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter called "the Act") for detention of the petitioner on the grounds attached to the order of detention. A copy of the grounds of detention prepared by the District Magistrate was served on the petitioner on 4-9-2011. The State Government approved the order of detention on 9-9-2011. The petitioner submitted two representations through the Jail authorities separately on 5-9-2011 and 27-10-2011 to the Advisory Board of the State Government as well as to the Central Government respectively. The Advisory Board confirmed the order of detention and subsequently the same was also confirmed by the State Government and an

order was passed u/s 13 of the Act directing detention of the petitioner for a period of 12 months on 4-11-2011. The order of detention is challenged by the petitioner on the following grounds:--

(1) The grounds of detention relate to individual criminal cases initiated against the petitioner which may amount to breach of law and order but there is no allegation of breach of public order.

(2) The grounds of detention indicate that the District Magistrate & Collector, Sambalpur apprehending that the petitioner may be released on bail in connection with Dhanupali P.S. Case No. 122 dated 28-7-2011 corresponding to G.R. Case No. 1361 of 2011 pending in the Court of the learned S.D.J.M., Sambalpur has passed the order of detention. While passing the order of detention, no reasons have been assigned by the District Magistrate-cum-Collector, Sambalpur as to why he was apprehending grant of bail to the petitioner in the said case.

(3) There has been inordinate delay in disposal of the representation addressed to the State Government.

2. So far as the first ground is concerned. Shri. Ragada, the learned counsel appearing for the petitioner drew attention of the Court to the grounds of detention and submitted that each individual case referred to in the grounds of detention only speaks of breach of law and order and there is no allegation of any breach of public order. Learned counsel for the State specifically referred to Ground No. 8 relating to an incident that had occurred on 28-7-2011 for which Dhanupali P.S. Case No. 122 dated 28-7-2011 had been registered for commission of offence under Sections 147/ 148/ 323/324/ 325/307/506 and 149 of the Indian Penal Code read with Section 25/ 27 of the Arms Act and the telephonic message received by the I.I.C., Khetrampur P.S. dated 16-8-2011 to show that there was breach of public order at the instance of the petitioner.

On perusal of the grounds of detention, we find that in relation to an incident dated 12-1-2006. Town P.S. Case No. 9 dated 11-1-2006 had been registered for commission of offence u/s 399/402 of the Indian Penal Code read with Section 25/27 of the Arms Act. The petitioner was convicted for commission of offence u/s 25 of the Arms Act in the said case and had been sentenced to imprisonment. In relation to an incident dated 3-6-2006, Sambalpur Town P.S. Case No. 138 dated 3-6-2006 was registered for commission of offence u/s 385/307/294/34 of the Indian Penal Code against the petitioner. In relation to an incident dated 25-3-2008. Dhanupali P.S. Case No. 41 dated 25-3-2008 registered for commission of offence u/s 147/148/ 294/307/506/149 of the Indian Penal Code read with Section 25/27 of the Arms Act. The petitioner was granted interim bail for attending his ailing sister by this Court and while on interim bail. Sambalpur Town P.S. Case No. 334 dated 15-12-2008 was registered in relation to an incident dated 15-12-2008 for commission of offence u/s 147/ 148/341/323/323/506/307/149 of the Indian Penal Code read with Section

25/27 of the Arms Act. While on bail, another case was registered against the petitioner vide Dhanupali P.S. Case No. 128 dated 31-1-2010 for commission of offence u/s 341/323/325/379/506/307 and 34 of the Indian Penal Code. On 9-7-2010 another case was also registered vide Rengali P.S. Case No. 49 dated 9-7-2010 for commission of offence u/s 395 of the Indian Penal Code and after completion of investigation, charge-sheet has been submitted for commission of offence u/s 450/395/412/ 109 of the Indian Penal Code read with Section 25/27 of the Arms Act. The petitioner has been again entangled as an accused in relation to an incident dated 28-7-2011 vide Dhanupali P.S. Case No. 122 dated 28-7-2011 was registered for commission of offence u/s 147/148/323/324/325/307/506/149 of the Indian Penal Code read with Section 25/27 of the Arms Act. He was arrested in connection with the said case on 21-8-2011 and a single shot gun was recovered during the personal search and was seized. Prior to his arrest on 21-8-2011, on 16-8-2011, the I.I.C., Khetrajpur P.S. received telephonic information that the petitioner was moving with a gun at Agrasen Bhawan and was terrorizing the local businessmen. On receipt of the information, the I.I.C. along with the staff reached at Agrasen Bhawan and found the local people scared as well as in a state of panic. None came forward to inform about such abnormal situation. After much persuasion, few local residents came forward and informed that at about 12.45 p.m. the petitioner reached near Agrasen Bhawan in a motorcycle and picked up quarrel with another motorcyclist. When the local residents reached at the spot, he brought out one pistol and brandishing the same terrorized them. As a result, out of fear and panic, the local people fled away and the area became deserted affecting the normal life of general public. However, nobody agreed to inform about the incident to the police.

On examination of the individual cases referred to in the grounds of detention, we find that most of the incidents took place in public places. Therefore, we do not agree with the learned counsel for the petitioner that the cases referred to in the grounds of detention relate to individual criminal acts amounting to breach of law and order. On the other hand, some of the incidents clearly show that the occurrences had taken place in " public places.

So far as the second ground taken by the petitioner is concerned, in paragraph-10 of the grounds of detention, the following reason has been given by the Collector-cum-District Magistrate as to why he was apprehending grant of bail to the petitioner in Dhanupali P.S. Case No. 122 dated 28-7-2011. The reason assigned in the said paragraph is quoted below :--

You after release on bail, in each case earlier, has repeatedly indulged yourself in heinous and sensational crimes, affecting public peace and tranquility, affecting normal lives which are detrimental to the maintenance of public order, as well as frequently disrupting public order by violating the bail conditions imposed by the Hon"ble Courts. Such type of your behavior is a clear indication that you have no fear to the existing law of the land.

The petitioner had earlier been released on bail in spite of his involvement in

similar nature of cases. Therefore, apprehension in the mind of the Collector that the petitioner may also be released on bail is justified. We, therefore, find no substance in the second ground taken by the petitioner.

The third ground relates to delay in disposing of the representation filed by the petitioner by the State Government. The learned counsel for the State produced the records as no counter-affidavit has been filed by the State and the counter-affidavit has only been filed by the Collector, the Detaining Authority. From the record, we find that as admitted by the petitioner the representation to the State Government against the order of detention had been submitted by the petitioner on 27-10-2011. The said representation was received by the Home Department on 4-11-2011. The representation of the petitioner along with the para-wise comments was placed before the Joint Secretary on 9-11-2011 and it was forwarded to the Commissioner-cum-Secretary to Government, Home Department. The record was received by the Secretary to Government, Home Department on 11-11-2011. The Secretary, Home Department made an endorsement on 15-11-2011 to obtain Government orders for rejection of the representation having found that the said representation had no merit. Ultimately the approval of the Government was obtained through the Hon'ble Chief Minister on 19-11-2011. Therefore, from the record, it appears that the representation of the petitioner dated 27-10-2011 had been received by the Home Department on 4-11-2011 and the decision to reject the same being devoid of merit was taken on 15-11-2011 though the signature of the Hon'ble Chief Minister was obtained on 19-11-2011. Effectively the representation of the petitioner was dealt with by the Home Department and a decision had been taken to reject the same being devoid of merit within the eleven days.

The learned counsel for the petitioner relied on three decisions relating to delay in disposal of the representation. Reliance was placed on a decision of the Hon'ble Supreme Court in the case of *Ummu Sabeena v. State of Kerala & others*, reported in (2012) 51 OCR (SC) 96. It appears that in the said case the detenu had been detained u/s 3 of the COFEPOSA and he had submitted a representation to the State Government on 30-3-2011. The said representation was rejected on 6-6-2011 and accordingly the Hon'ble Supreme Court held that there was inordinate delay in disposal of the representation. Reliance was also placed on a decision of this Court in the case of *Bijaya Parida v. State of Orissa and others*, reported in 2006 (II) OLR 591. In the said case, there was delay of more than fifteen days in disposal of the representation and the Court allowed the writ application on the ground of delay in disposal of the representation as no explanation had been offered by the State Government for such delay. Another decision was also relied upon by the learned counsel for the State in the case of *Kalia alias Alok Kumar Das v. District Magistrate, Dhenkanal & two others*, reported in (2007) 38 OCR 386. There was delay of thirty-three days in disposal of the representation by the Central Government and delay of twenty-six days by the State Government and no satisfactory explanation had been offered for such delay in disposal of the representation. Therefore, the Court allowed the writ

application.

In the present case, the time consumed for taking a decision on the representation of the petitioner is eleven days. A decision had been taken by the Secretary, Home Department to reject the representation on 15-11-2011 but the signature of the Hon"ble Chief Minister was obtained on 19-11-2011. From the record also we find that after receipt of the representation steps were taken for consideration of the same and the file moved from the Joint Secretary to the Secretary and thereafter to the office of the Chief Minister. We, therefore, do not find unreasonable delay in disposal of the representation of the petitioner dated 27-10-2011. The record clearly indicates the reasons for consuming eleven days in taking a decision on the representation. For the reasons stated above, we also do not find any substance in the third ground taken by the petitioner.

In view of the discussions made above, we find no merit in the writ application and accordingly dismiss the same.