
(1996) 01 OHC CK 0020

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7722 of 1995

N. Ganesh Reddy alias Nilapu Ganesh Reddy

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (1996) 1 OLR 373

Hon'ble Judges : D.P. Mohapatra, Acting C.J.; P.K. Misra, J

Bench : Division Bench

Advocate : Davashis Panda, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, A.C.J.

1. In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner, N. Ganesh Reddy alias Nilapu Ganesh Reddy, has prayed for a writ of habeas corpus directing his release from custody holding that the order of the District Magistrate, Ganjam (O. P. No. 2) dated 28-7-1995 (Annexure-1) directing his detention u/s 3 of the National Security Act, 1980 and the order of confirmation dated 21-9-1995 (Annexure-3) are illegal and invalid.

2. The short point raised by Shri Panda in support of the writ petition is that the detention order under the National Security Act, 1980 was passed when the petitioner was already in detention in a criminal case and was lodged in Chatrapur Sub-Jail, The detaining authority while passing the order of detention, as the records reveal, has neither applied his mind to the fact of petitioner's detention nor has he considered that the petitioner is likely to be released, and in that event, he will indulge in similar anti-social and criminal activities as in the past. Shri Panda has placed reliance on the decisions of the Supreme Court reported in N. Meera Rani Vs. Government of Tamil Nadu and Another, :

Dharmendra Suganchand Chelawat and another Vs. Union of India and others, and (1994) 7 OCR 896 (SC) (Surya Prakash Sharma v. State of U. P. and Ors.) and the decision of this Court reported in (1995) 8 OCR 102 (Dasarathi Panda v. State of Orissa and Ors.).

Refuting the submission of Shri Panda, learned Additional Government Advocate submits that the file of the detaining authority, particularly the report of the Superintendent of Police, shows that the detaining authority was aware of the subsisting detention of the petitioner in the criminal case and, therefore, submits the learned Addl. Government Advocate, the detention order cannot be faulted on that ground. On the rival contentions raised by the learned counsel for the parties, the question that is to be answered is whether the detention order can be held to be invalid and unsustainable on the ground that the detaining authority did not apply his mind to the fact that the petitioner was already in detention and whether there was a reasonable apprehension on the materials placed before him and for cogent reason that he is likely to be released from custody and in that event will indulge in anti-social/criminal activities as in the past. The apex Court in N. Meera Rani Vs. Government of Tamil Nadu and Another, observed ;

"We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case ; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody ; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order ; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position."

Reiterating the above position, the Court in Dharmendra Suganchand Chelawat and another Vs. Union of India and others, observed in paragraph 10:

"The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention ; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account the nature of the antecedent

activities of detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

The position was reiterated in (1994) 7 OCR 896 (SC) (supra). This Court referring to the aforementioned Supreme Court decisions quashed, the detention order in (1995) 8 OCR 102 (supra).

3. We have carefully perused the detention order, the grounds of detention served on the petitioner and the counter-affidavit sworn by the District Magistrate, Ganjam, and the relevant material on the file. We find that though there is some material to show that the detaining authority can be said to have been aware of the subsisting detention of the petitioner in the criminal case, there is absolutely no material to show that he had also applied his mind to the other requirements, i. e., whether the petitioner is likely to be released from detention soon, and on being released, he is likely to indulge in prejudicial activities affecting public order.

4. On a fair reading of the decisions of the apex Court, it is our considered view that unless both the requirements noted above are satisfied in the case, there is no escape from the position that the detention order is vitiated due to non-application of mind by the detaining authority. In the facts and circumstances of the case, the inescapable conclusion is that the detention order of the petitioner as per Annexure-1 and the confirmation order as per Annexure-3 are invalid and unsustainable and are, therefore, to be quashed. It is ordered accordingly. The writ petition is accordingly allowed and the petitioner be released forthwith if his detention is not required in any other case.

P.K. Misra, J.

I agree.