
(2014) 09 OHC CK 0045
In the Orissa High Court
Case No : W.P.(Crl.) No. 1684 of 2013

Nari

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 22(2)
National Security Act, 1980 — Section 3, 3(2)
National Security Guard Act, 1986 — Section 3, 3(2)
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 294
Prevention of Damage to Public Property Act, 1984 — Section 3, 4

Citation : (2015) 119 CLT 469 : (2015) CriLJ 89 : (2015) 1 OLR 13 : (2015) 1 RCR(Criminal) 845

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

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—The present Writ Petition seeking issue of a writ of Habeas Corpus has been filed by the petitioner-Nari @ Narasingh Mohanty challenging the legality of the order of his detention dated 15.11.2013 passed by the District Magistrate, Ganjam u/s 3(2) of the National Security Act, 1980 on the ground that such order as well as approval of the same is unconstitutional and illegal.

2. Petitioner's case in a nut-shell is that opposite party No. 3-Collector and District Magistrate, Ganjam on a proposal of the report of opposite party No. 4-Superintendent of Police, Ganjam in exercise of power u/s 3(2) of the National Security Act, 1980 (for short, "NS Act") passed the order of detention on 15.11.2013 directing detention of the petitioner-detenu in sub-jail, Kodala until further orders. Thereafter, opposite party No. 3 served the grounds of detention on the petitioner vide order No. 1243 dated 16.11.2013.

3. Learned counsel, Mr. Dipti R. Mohapatra appearing on behalf of the petitioner submitted that in order to justify petitioner's detention u/s 3 of the NS Act, opposite Party No. 3 has referred to certain cases and station diaries made at

Rambha Police Station against the detenu which reveal cognizable offences. In most of those cases, petitioner is on bail. The grounds of detention further reveal that since there is possibility of the petitioner being released on bail, the order of detention was passed. Opposite party No. 2-State being represented through the Secretary to Government in the Department of Home (Special Section), without considering legality of the petitioner's detention order has approved the same vide order No. 3094/C dated 26.11.2013 under Annexure-3. On perusal of the entire criminal background of the petitioner, it appears that there is no material to show that the petitioner is an accused of any case relating to the offences enumerated under Chapter-VI of the Indian Penal Code. Every citizen in this country has the right to take recourse to law. He has the right to move the Court for bail when he is arrested under the ordinary law of the land. If the State thinks that he does not deserve bail, the State can oppose to the grant of bail. He cannot, however, be interdicted from moving the Court for bail by issuing an order of detention. There is no material to show that if the petitioner is enlarged on bail he would act prejudicially to the interest of public. Merely because there are number of criminal cases against the petitioner that does not validate the order of detention passed u/s 3 of the NS Act, particularly when no case of breach of public order is made out. Various cases filed against the petitioner relate to inter-se personal dispute, but not with regard to the breach of public order. In absence of the same, the order of detention amounts to depriving the petitioner from his constitutional right to life and liberty.

4. Mr. M.S. Sahoo, learned Additional Standing Counsel for the State-opposite party Nos. 2 to 6 submitted that the petitioner has not submitted any representation pursuant to the order of detention passed u/s 3 of the NS Act. On the basis of the letter given by opposite party No. 4-Superintendent of Police, Ganjam indicating criminal activities and incidents of the petitioner-detenu, opposite party No. 3-Collector, Ganjam passed the impugned order of detention. On receiving the said report from opposite party No. 4, opposite party No. 3-Collector, Ganjam has examined the documents submitted before him and enquired about the situation and ultimately being subjectively satisfied and convinced that the incidents and occurrences committed by the petitioner-Nari are heinous in nature and the provisions of common law are insufficient to deal with the offences committed by the petitioner, the impugned order of detention has been passed. The petitioner is a habitual criminal and is involved in various criminal activities; he used to threaten the general public and indulge in collecting "dadabati". He is well-connected with the liquor mafias and has organized a gang of anti-socials, who terrorize the general public and cause danger to the public order. The common people are very much afraid of with the presence of the petitioner-detenu. The NSA Advisory Board approved the detention of the detenu on 03.01.2014, which was subsequently confirmed by the State Government. There was every possibility that law and order situation in the village would be disturbed by the petitioner and he would also threaten the opponent party members and gain over the witnesses on his release from the

jail. Cases were registered on the basis of station diary entries in which sufficient evidence had been gathered. As local people do not dare to report the matter due to fear of assault by the petitioner, nobody came forward in many instances to give evidence against the petitioner during enquiry by the police, for which the Police is unable to register the cases on plain paper. The provision relating to detention under NS Act does not necessarily require registration of the case under Chapter-VI of Indian Penal Code. Petitioner is involved in cases which are against the State, i.e., during the Phailin in Ganjam district, while the people were suffering due to non-availability of essential commodities, the petitioner detained the trucks carrying essential commodities to be provided to the cyclone affected victims, by blocking NH-5 for hours together, as a result of which essential commodities could not be supplied to the cyclone affected victims in time. The petitioner-detenu also ventured to enter into the Police out Post forcibly and deterred the in-Charge of Huma Out Post under Rambha Police Station, by preventing him to do his lawful duty thereby showing his antisocial and highhanded activities. The petitioner-detenu is a hardcore antisocial and threatens the public by his muscle power with his associates and has gone against the law of the land by disturbing public order. He in association with his supporters created panic in the minds of the local people by intervening in their normal way of living. Opposite party No. 4-Superintendent of Police, Ganjam in his counter affidavit has stated that the petitioner is a hardcore antisocial and involved in a series of criminal cases, i.e., rioting, attempt to murder, extortion and also involved in I.D. liquor business. He has a wide networking with criminals in different parts of Ganjam district and also spread his antisocial empire by involving number of his associates. Ten numbers of P.S. cases and nine numbers of Station Diary Entries have been registered against him in different sections of IPC. Common people do not dare to adduce evidence against the petitioner-detenu and his followers. The detenu along with his supporters assaulted one Mochiram Pradhan and others at Jatra party ground by means of lathies and iron rods by terrorizing public and tried to set fire to the tarpaulin of Jatra party as a result of which Rambha P.S. Case No. 61 dated 25.05.2008 was registered under Sections 147/148/294/323/325/307/506/427/149 of IPC. On 06.02.2008, one Bipra Sahoo of Huma met with an accident on NH-5 near Huma, by which the detenu along with his supports made "rasta roka", thereby creating panic in the minds of the general public by paralyzing the day-to-day life of the people. The petitioner and his associates are also involved in use and supply of illegal and unlicensed fire arms like Pistols, Revolvers, Mousers and Single Shot Pistols. In this connection, Rambha P.S. Case No. 178 dated 18.11.2009 has been registered against him. At times, the detenu used to terrorise the villagers by showing Pistol for which panic is created in the locality and no one dares to raise his voice against his activities or come forward to allege against him before Police. The detenu has scant regard for the law of the land and is in a habit to defy the law and creates havoc, and law and order situation in the locality for which many cases including Rambha P.S. Case No. 143 of 2008 has been registered. He could also dare to assault the in-charge of Huma Police Out Post

inside the office for which, Rambha PS Case No. 21 of 2011 has been registered against the detenu. Petitioner and his associates are moving openly in the society with pistols, bombs, swords, katies, iron rods, lathies, bhujalies etc. for which the general public become fear-stricken.

5. Mr. Sahoo further submitted that in the last devastating cyclone "Phailin" occurred on 12.10.2013 in Ganjam district, the Government has undertaken a massive relief operation in the locality of Rambha Police Station to provide food and shelter to the cyclone affected people. Taking advantage of the situation, the detenu and his associates tried to loot the relief materials from NH. 5 adjacent to Huma in the broad day light and instigated antisocials to grab the relief materials by using force adopting the principle of "Might is Right". The petitioner and his associates became violent by way of burning tyres on the road and started pelting stones towards the Police and Government officials. Some of them also started damaging the passing vehicles and paralyzed the vehicular traffic on NH-5 and tried to loot the relief materials diverting the Police in clearing the road so blocked. The shopkeepers of Huma also became panic and closed down their shops out of fear. The detenu and his associates compelled the Police to scare out them by using mild force, since the travelers of passenger Buses, four wheelers and transporters had been detained for more than two hours.

With much difficulties, the detenu was arrested on 17.10.2013 in connection with Rambha P.S. Case No. 119 dated 16.10.2013. Since the opposite parties felt that anti-social activities of the petitioner-detenu could not be dealt with under the provisions of the common law and his presence in the locality is highly prejudicial to the maintenance of public order, the Superintendent of Police, Ganjam felt it necessary to recommend the appropriate authority to detain him under the provisions of NS Act. Therefore, the order of detention passed by opposite party No. 3 was neither unconstitutional nor unacceptable under the law. All the requirements necessary u/s 3 of NS Act are satisfied in the case of petitioner and the impugned order of detention is not illegal. Concluding his argument, Mr. Sahoo submitted for dismissal of the Habeas Corpus petition.

6. Mr. Anup K. Bose, learned Asst. Solicitor General appearing for the Union of India submitted that no representation of the petitioner has been received by the Central Government.

7. Although it is averred by the petitioner in the writ petition that the representation filed by him challenging the order of detention has not been disposed of till date, learned counsel for the petitioner did not want to press that point.

8. On the rival contentions of the parties, the following questions arise for consideration by this Court:-

(i) Whether the facts and situation of the case make out a case of public order or merely one of law and order?

(ii) Whether the grounds on which the detention order is passed against the petitioner satisfy the legal requirement that the detention order is to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order?

(iii) What order?

9. Question Nos. (i) and (ii) being interlinked, they are dealt with together.

10. It is relevant to quote here the relevant portion of detention order dated 15.11.2013 (Annexure-1) which reads as follows:-

"ORDER

Whereas I Dr. Krishan Kumar, I.A.S., District Magistrate, Ganjam, Chatrapur have been delegated by Government of Odisha in Home Department Order No. 2565/C dtd. 3rd October, 2013 to exercise the powers conferred under sub-section (2) of Sec. 3 of the National Security Act 1980.

Whereas I am satisfied after examining the material evidences submitted by the Superintendent of Police Ganjam, Chatrapur vide letter No. 3220/IB dt. 05.11.2013 that the criminal activities of Nari @ Narasingha Mohanty aged about 30 years, S/o Mag Mohanty of Bada Sahi, Humma PS: Rambha Dist: Ganjam, is prejudicial to the maintenance of public order. It is therefore necessary to pass the following order to prevent him from acting in any manner to disturb public order.

Now therefore, in exercise of powers conferred by Sub-section (2) of Sec. 3 of National Security Act 1980, I do hereby direct that the said Nari @ Narasingha Mohanty who is now in intermediate judicial custody in Sub-Jail, Kodala vide Rambha P.S. case No. 119 dtd. 17.10.2013 U/s. 143/431/323/332/353/336/294/337/307/427/149 IPC/ 4 PD PP Act/ 7 CRLA Act, be detained in the Sub-Jail, Kodala until further orders.

District Magistrate

Ganjam, Chatrapur"

11. In the grounds of detention, the opposite party No. 3-Collector, Ganjam referred to as many as 10 P.S. Cases of Rambha Police Station and 9 SD entries. In respect of some of the P.S. cases, charge-sheets have been submitted and in case of others, investigation is in progress. On completion of the investigation, the Investigating Officer submitted charge-sheets in respect of cases except P.S. Case No. 119 dated 16.10.2013. The main grievance against the petitioner is that since the petitioner-detenu has applied for bail in G.R. Case No. 396/2013 arising out of Rambha P.S. Case No. 119 dated 16.10.2013 and he is likely to be released on bail, it is necessary to detain the petitioner to prevent him from acting in any manner prejudicial to the maintenance of public order within the limits of Rambha Police Station and other parts of the district in exercise of power u/s 3(2) of the NS Act.

12. It is necessary to extract here the allegations made against the petitioner in Rambha Police Station in Rambha P.S. Case No. 119 dated 16.10.2013.

"On 16.10.2013 at about 07.30 P.M. Shri R.P. Pradhan IIC Rambha PS drew up a plain paper FIR which disclosed that on 16.10.2013 at 05.00 P.M. about 500 villagers of Humma and Gada Humma including 100 ladies under your leadership suddenly came in a group and blocked NH-5 at Humma Bazar demanding immediate distribution of relief material to the victims of cyclone by which the vehicular traffic and public passers were obstructed. Getting information about road blockade he arrived at the spot with other staff of the PS and approached you not to block the road. But, you misbehaved the police personnel by using unparliamentary words such as "Maaghia and Bhaunigiha". In spite of their best efforts to refrain you, the agitators paid deaf ear to the approach of Police and became more adamant and violent in continuing unlawful and nefarious activities. You and your supporters became more aggressive by burning tyres on the roads and started brick biting aiming police personnel with an attempt to kill them. Luckily they saved their lives by taking shelter on the side of the vehicles stranded there. Due to pelting of stones, the Police Jeep was damaged and Police personnel also sustained injuries. When the situation became uncontrolled he sent information to higher quarter and getting information Shri Subash Chandra Acharjya, DSP Hqrs. Along with the Executive Magistrate and Police force reached the spot and requested the violent Mob to disperse them and to normalize the situation on road, since the road users were detained since last 02.00 hours. The magistrate also assured you all to provide relief to the affected persons of the cyclone very soon. Thereafter with use of mild force, you and your supporters went away the road. But, due to the activities by instigating the innocent people to block the road demanding immediate relief, the normal life of general public was paralysed for about 02.00 hours and the shop keepers of Humma bazaar closed down their shops out of fear. The road users were also became panic and were inconvenience for the above period.

On this Rambha P.S. Case No. 119 dt. 16.10.2013, U/S. 143/431/323/332/353/336/294/337/307/427/149 IPC/ 3 PDPP Act/ 7 CRLA Act was registered and SI N. Das of Rambha PS is investigating into the case.

The case is under investigation."

(underlined for emphasis)

13. The above allegation reveals that on 16.10.2013, about 500 villagers of Humma and Gada Humma including 100 ladies came in a group and blocked NH-5 at Humma Bazar demanding immediate distribution of relief materials to the affected victims in the cyclone by which the vehicular traffic and public passers were obstructed. It is alleged that among the group, the petitioner-detenu was taking the leadership. It is further indicated that on assurance by the Magistrate to all the agitators that relief materials would be provided to the affected persons of the cyclone very soon, petitioner along with his supporters

went away. Nothing has been stated as to on what basis it is alleged that the petitioner was taking the leadership of the group and instigated the innocent people to block the road demanding distribution of relief materials immediately because of which normal life of general public was paralyzed for about two hours. Therefore, on the basis of materials available, it is difficult to come to a conclusion that the activities of the petitioner amount to disturbance of public order.

14. At this juncture, it would be beneficial to refer to the judgments of the Hon"ble Supreme Court and our own High Court which are relevant for the purpose of dealing with the above question Nos. (i) and (ii).

15. The Hon"ble Supreme Court in the case of Haradhan Saha Vs. The State of West Bengal and Others, held that preventive detention is not to punish a person for something he has done but to prevent him from doing it. Therefore, since the detention order passed on the allegation of involvement of the detenu in a number of criminal cases without disclosing any material in the report of the Superintendent of Police or materials available before the Detaining Authority that there is likelihood of breach of public order, the detention order cannot be sustained.

16. Hon"ble Supreme Court in the case of Smt. Tarannum Vs. Union of India and Others, held that the detaining authority at the time of passing the order of detention as well as the State Government while confirming the same should take into consideration the nature of allegations and offences alleged in the grounds of detention to examine whether the same relates to "public order" and the normal law cannot take care of such offences and that the acts of the detenu mentioned in the grounds of detention are prejudicial to maintenance of public order or they only relate to "law and order".

17. The Hon"ble Supreme Court in the case of Yumman Ongbi Lembi Liema Vs. State of Manipur, 2012 (I) OLR (SC) 550 referring to the earlier decision of the Hon"ble Supreme Court in Haradhan Saha (supra), held that the extraordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution where the grounds of detention do not disclose any material which was before the detaining authority other than the fact that there is every likelihood of the detenu being released on bail in connection with the cases in respect of which he had been arrested to support the order of detention. It is also held that preventive detention is not to punish a person for something he has done but to prevent him from doing it. Only on the apprehension of the detaining authority that after being released on bail, the petitioner-detenu will indulge in similar activities, which will be prejudicial to public order, order under the Act should not ordinarily be passed.

18. The Hon"ble Supreme Court in the case of Huidrom Konungjao Singh Vs. State of Manipur and Others, held that three cumulative and additive nature of requirements are to be satisfied to pass the order of detention; they are:

(i) The authority was fully aware of the fact that the detenu was actually in custody;

(ii) There was reliable material before the said authority on the basis of which it could have reason to believe that there was real possibility of his release on bail and being released he would probably indulge in activities, which are prejudicial to public order;

(iii) Necessity to prevent him for which detention order was required.

19. This Court in the case of Sri Sadasiva Apat @ Sada Vs. State of Orissa and another, 80 (1995) CLT 804, referring to the decisions of the Hon"ble Supreme Court in the cases of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Arun Ghosh Vs. State of West Bengal, ; Dipak Bose alias Naripada Vs. State of West Bengal, and Kuso Sah Vs. The State of Bihar and Others, formulated the following factors to be borne in mind while determining whether the disturbance or disorder amounts to breach of "law and order" or "public order".

(i) The contravention of law always affects order, but before it can be said to affect the public order, it must affect the community or the public at large;

(ii) Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality;

(iii) It is the degree of disturbance and its effect on the life of the community in the locality, which determine whether that disturbance amounts to breach of law and order or public order;

(iv) Any act by itself is not determinant of its own gravity. In its quality, it may not differ from another, but in potentiality it may be very different.

(v) Whether a man has committed breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act on the society.

(vi) Every assaulting a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed.

(vii) It is well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life.

(viii) Whether disturbance or disorder has led to breach of law and public order is a question of fact, in which case there is no formula by which one case can be distinguished from another.

20. On perusal of the grounds of detention dated 16.11.2013, we are of the considered view that the allegations in the criminal cases on the basis of which the detention order has been passed relate to violation of law and order and that

cannot be construed as violation of tranquility and public order, which is the requirement as provided u/s 3(2) of the NS Act to pass the order of detention against the petitioner. Accordingly, we have no hesitation to hold that passing of the order of detention against the petitioner-detenu for the reasons indicated therein is not sustainable in law and the same is contrary to the judgments of the Hon"ble Supreme Court and this Court referred to herein above.

21. In view of the above, the order of detention dated 15.11.2013 which was confirmed by the State Government is hereby quashed. The petitioner-detenu be released from jail custody forthwith, if his detention is not required in connection with any other criminal case pending against him.

22. In the result, the writ petition is allowed, but in the circumstances without any order as to costs.

I. Mahanty, J.

23. I agree.