
(2006) 11 OHC CK 0001
In the Orissa High Court

Nihar Ranjan Rout ' Chutia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Constitution of India, 1950 — Article 22, 226
National Security Act, 1980 — Section 3

Citation : (2007) CLT 106 (Suppl CrI) : (2007) 1 OLR 77

Hon'ble Judges : S. Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Barman Roy, C.J.—By this application for a writ of habeas corpus under Article 226 of the Constitution of India the petitioner being the detenu himself seeks to challenge the order of detention dated 19.7.2006 under Annexure-1 to the petition issued by the District Magistrate, Keonjhar under Sub-section (2) of Section 3 of National Security Act, 1980 (hereinafter referred to as the said "Act").

2. By the impugned order of detention the petitioner was directed to be detained so as to prevent him from acting in any manner prejudicial to the maintenance of public order. The impugned order reads as under:

Office of the Collector and District Magistrate, Keonjhar

Order No. 1/C Dated 19.7.2006

Whereas I, Sushil Kumar Lohani, I.A.S., District Magistrate, Keonjhar have been authorized in Government of Orissa, Home (Special Section) Department Order No. 2814/C. dated 24th June, 2006 to exercise powers conferred by Sub-section (2) Section 3 of the National Security Act, 1980.

Whereas, I am satisfied that with a view to preventing Nihar Ranjan Rout alias Chutia S/o Ramachandra Rout of Joda P.S., Joda, District : Keonjhar 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 the powers conferred on me under Sub-section (2) of Section 3 of the National Security Act, 1980, I do hereby direct that the said Nihar Ranjan Rout alias Chutia be detained in the District Jail, Keonjhar until further orders.

Sd/- District Magistrate Keonjhar

3. That the impugned order of detention was served upon the petitioner and he was arrested under the aforesaid provision of law. The petitioner was detained in the District Jail, Keonjhar. While the petitioner was undergoing detention pursuant to the impugned order of detention, on 23.7.2006 he was served with grounds of detention. Various reasons have been assigned in the said grounds of detention for detention of the petitioner under Sub-section (2) of Section 3 of the said Act. The grounds of detention is at Annexure-2 to the petition. On or about 27.7.2006, the petitioner was served with order of the State Government approving the detention. In response thereto, the petitioner submitted his representation on 22.8.2006 addressed to the Secretary, Department of Home (Special Section), Government of Orissa, Bhubaneswar, District Magistrate, Keonjhar and Union of India and Chairman to the Advisory Board through the Superintendent of District Jail, Keonjhar. The petitioner was produced before the Advisory Board and he made his necessary submissions before the said Board on 30.8.2006. However, by order dated 16.9.2006 the State Government rejected the representation of the petitioner dated 22.8.2006 against his detention. The said order of the State Government rejecting the representation of the petitioner was communicated to him while in District Jail, Keonjhar on 16.9.2006.

4. The contention of the learned Counsel for the petitioner in brief is that there was inordinate delay on the part of the State Government in disposing of the representation made by the petitioner against his detention. It appears that there was about 25 days' delay on the part of the State Government to dispose of the representation of the petitioner.

5. Learned Counsel for the petitioner has heavily relied upon the decision of the Apex Court in *Piara Singh Vs. State of Punjab*, We are not going into details of the said decision of the Apex Court. However, it needs to be mentioned here that it appears from the said decision that there was delay of about one month and twelve days on the part of the Government to dispose of the representation made by the detenu of that case against his detention and on that ground the order of detention was quashed by the Apex Court. While quashing the order of detention, the Apex Court held in that case that Clause (5) of Article 22 of the Constitution does not lay down the fixed time within which such representation should be disposed of. However, the language in which Clause (5) of Article 22 of the Constitution is couched, the same implies that the representation of a detenu under law of preventive detention against his detention needs to be disposed of

with a sense of urgency. In such circumstances delay of about one month and twelve days to dispose of the representation made by the detenu of that case was held to have vitiated the continued detention of the detenu and accordingly the order of detention against him was quashed and the detenu was directed to be set at liberty forthwith.

6. Learned Counsel for the petitioner also relied upon another decision of the Apex Court in Rama Dhondurao Borade Vs. V.K. Saraf, Commissioner of Police and Others, . We need not go into details of the facts of that case as the same are not necessary for disposal of this case. It will suffice to mention here that the delay of about 28 days to dispose of the representation of a detenu against his continued detention in that case was held to have vitiated the continued detention of the detenu under the provisions of National Security Act. In the present case we find that there was a delay of 25 days on the part of the State Government to dispose of the representation. However, it is contended by the learned Government Advocate that there was some delay in the department to prepare para-wise comments and thereafter, there was further delay of about 17 days to dispose of the representation. In our view, the delay in preparing the para-wise comments is caused by the Department itself dealing with the representation of the detenu and therefore that cannot be a ground to justify the delay of about 25 days in total, to dispose of the representation of the detenu.

7. Considering the submissions made by the learned Counsel for the respective parties and the fact that there was a delay of 25 days by the State in disposing of the representation of the detenu, we are of the view that the said delay of 25 days vitiates the order of continued detention of the detenu. We, therefore, allow this petition and quash the impugned order of detention dated 19.7.2006 passed against the detenu and further direct that the detenu shall be set at liberty forthwith.