
(2012) 06 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 374 of 2012

Pandaba @ Pandav Mukhi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2013) 2 Crimes 732

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Advocate : B. Mohanty and A. Tripathy, for the Appellant; B.P. Pradhan, Additional Govt. Advocate For O.Ps. 1 and 2 and Mr. S.D. Das Asst. Solicitor General for O.P. 3, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails the order dated 21.12.2011 passed by the District Magistrate, Sambalpur directing his detention in Circle Jail, Sambalpur in exercise of powers conferred by sub-section (2) of Section 3 of the National Security Act, 1980 as well as the orders passed by the State Government and the Central Government rejecting his representation. The District Magistrate, Sambalpur passed the order of detention in Annexure-1 and the grounds of detention were handed over to the petitioner. The grounds of detention annexed to the writ application as Annexure-2 shows involvement of the petitioner in criminal activities from 2006 till 2011. The last incident was on 10.12.2011, when one Gokul Kusum lodged an FIR in the Town Police Station alleging therein that on that day at about 3.00 p.m., 35 to 40 youngsters of Thelkopada attacked his son and opened fire with an intention to kill him. Thereafter the petitioner and his associates forming unlawful assembly carrying deadly weapons like sword, lathi, gun etc. rushed from Thelkopada to Hospital Gate and attacked his son Rupesh Kusum in-front of Hospital Gate inflicting serious injuries on him. Others also terrorized the local residents with dire

consequences. The case was registered for commission of offence u/s 307 apart from other sections of the Penal Code as well as under Sections 24 and 27 of the Arms Act. The previous incidents starting from the year 2006 also relate to similar nature of offences.

Against the order of detention, the petitioner submitted a representation on 7.1.2012 which was forwarded by the District Magistrate to the State Government on 15.1.2012 along with para-wise comments and the same was received by the State Government on 17.1.2012 and the petitioner was intimated about the rejection of the representation on 30.1.2012.

2. Learned counsel for the petitioner assails the order of detention solely on a technical point that the representation of the petitioner was not disposed of immediately after the same was received and there was delay in disposal of the representation.

Learned counsel for the State referred to the counter-affidavit filed by the Under Secretary to Government, Home Department and submitted that there was no delay in disposal of the representation by the State. Similarly, learned Assistant Solicitor General also submitted that there was no delay in disposal of the representation of the petitioner by the Central Government.

3. A date chart has been given in the counter-affidavit filed by opposite party No. 1. It appears from the said date chart that the petitioner was detained by order of the District Magistrate, Sambalpur on 21.12.2011. The grounds of detention were served on the petitioner on 23.12.2011. The petitioner submitted a representation to the State Government on 7.1.2012 and the same was received by the District Magistrate, Sambalpur on 9.1.2012. From 9.1.2012 till 15.1.2012 the representation was kept pending with the District Magistrate, Sambalpur and only on 15.1.2012, the representation alongwith parawise comments were forwarded to the State Government in the Home Department. The Home Department of the State Government received the representation alongwith parawise comments on 17.1.2012 and it was kept pending for almost 10 days and the representation was rejection by the State Government on 27.1.2012.

4. From the counter-affidavit filed by opposite party No. 1, we find that no reason whatsoever has been assigned as to why the representation received by the District Magistrate, Sambalpur on 9.1.2012 was kept pending till 15.1.2012 and even the counter affidavit filed by the Additional District Magistrate is also silent about the same. It is, therefore clear from the counter affidavit filed by opposite party Nos. 1 and 2 that the representation filed by the petitioner on 7.1.2012 had been received in the office of the District Magistrate, Sambalpur on 9.1.2012, but it was not forwarded to the Home Department till 15.1.2012. Similarly, representation of the petitioner alongwith para-wise comments forwarded by the District Magistrate Sambalpur were received by the Home (Special Section Department) on 17.1.2012 and it was rejected only on 27.1.2012, almost ten days after the same was received. In the counter-affidavit

filed by opposite party No. 1, there is no mention as to why the representation had not been disposed of by the State Government immediately after the same was received and it is only stated in the said counter affidavit filed by opposite party No. 1 that the representation alongwith the parawise comments of the District Magistrate, Sambalpur had been received by the Home Department on 17.1.2012 and the same was rejected on 27.1.2012. In this connection, reference may be made to a decision of this Court in the case of Md. Raju @ Md. Azim v. State of Odisha and others. (2012) 51 OCR 1027 The facts of file reported case are most similar to the facts of the present case. In the said reported case, the detenu submitted a representation on 23.10.2011 and the same was forwarded to the State Government in Home Department on 1.11.2011. The delay in remitting the representation to the Home Department had not been explained. The Home Department received the representation on 8.11.2011 and rejected the same on 18.11.2011. No explanation was also offered by the State Government explaining the delay of ten days in disposal of the representation. Though the representation was rejected on 18.11.2012 by the State Government communication was made to the detenu on 21.11.2011 and the delay of three days in communication had also not been explained. Taking all these facts into consideration the Court held that there was no explanation for delay of more than 26 days in disposal of the representation and accordingly allowed the writ application and set aside the detention order.

5. In the present case, there is unexplained delay of seven days in forwarding the representation of the petitioner by the District Magistrate, Sambalpur and unexplained delay of about ten days in disposal of the representation by the State Government. There is also unexplained delay of three days in communicating the rejection order to the petitioner. Therefore, there is delay of about twenty days in disposal of the representation. In this regard, reference may also be made to two decisions of the Court i.e. Kalia alias Alok Kumar Das Vs. District Magistrate and Others, and Bijaya Parida Vs. State of Orissa and Others, . Relying on the above decisions and on consideration of the fact that there was unexplained delay of 20 days in disposal of the representation, we allow the prayer and set aside the impugned order of detention passed by-the District Magistrate, Sambalpur in Annexure-1. The petitioner be set at liberty forthwith unless his detention is required in any other case.

The writ application is accordingly allowed.