

(2008) 01 OHC CK 0090

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 419 of 2007

Payan Raju ' Raju Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Arms Act, 1959 — Section 27

National Security Act, 1980 — Section 3(2)

Penal Code, 1860 (IPC) — Section 294, 307, 323, 324, 34

Citation : (2008) 01 OHC CK 0090

Hon'ble Judges : A.K. Ganguly, C.J;I. Mahanty, J

Bench : Division Bench

Advocate : Rajib Rath, D. Mitra, J. Dash and S.K. Gouda, for the Appellant;

Judgement

A.K. Ganguly, C.J.—This habeas corpus petition has been filed by the Petitioner challenging the order of his detention dated 14.8.2007 passed by the District Magistrate, Ganjam, Chatrapur under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to "the Act"). Along with the order of detention dated 14.8.2007, the grounds of detention were also served on the Petitioner. There are various grounds in support of the order of detention.

2. Though the Petitioner has not challenged the grounds of detention on merit but has assailed the following recitals made in the grounds of detention.

You have applied for bail and released on bail in B. Town PS Case No. 29/07, 71/07 and B. Sadar P.S. Case No. 93/07. You have also moved for your release on bail in B. Sadar PS Case No. 92 dt. 15.6.2007 u/s s. 341/323/294/324/307/34 Indian Penal Code/27 Arms Act vide B.A. No. 822/07 (Annexure-XIII) and in B. Sadar PS Case No. 94 dt. 15.6.2007 u/s s. 341/323/324/307/426/506/354/34 Indian Penal Code/27 Arms Act vide BA No. 8231 07. (Annexure-XIV.)

3. Relying upon the aforesaid recitals in the grounds of detention, the Learned

Counsel for the Petitioner submitted that the detaining authority has arrived at his satisfaction of detaining the Petitioner on the basis of the fact that the Petitioner has applied for bail in B. Sadar PS Case No. 92 dt. 15.6.2007 and B. Sadar P.S. Case No. 94 dt. 15.6.2007 but there is no satisfaction of the detaining authority that the Petitioner is likely to be released on bail in connection with those two cases. It has been alleged by the Learned Counsel for the Petitioner that the Petitioner is in custody in connection with those two cases. The order of detention cannot be passed by the detaining authority unless the said authority records his satisfaction that the Petitioner is likely to be released on bail in the aforesaid two cases and if he is released on bail, he would likely indulge in antisocial activities which would cause disruption of public order.

4. On the basis of similar complaint, this Court quashed the order of detention, inter alia, holding that when an order of preventive detention is passed, the detaining authority must indicate in the grounds of detention that he has requisite satisfaction on the above line i.e. the Petitioner is likely to be released on bail and if he is released bail, he will indulge in anti-social activities. In case such satisfaction is not recorded, the order of detention is vitiated.

5. In this line, there is long catena of decisions including the case of Daba " Sudarsan Das Vs. State of Orissa and Others, . Following the said Judgment, the Writ Petition is allowed and the order of detention dated 14.8.2007 passed by the District Magistrate, Ganjam, Chatrapur is quashed. The Petitioner be set at liberty forthwith, if his detention is no longer required in connection with any other case.