
(2005) 04 OHC CK 0058

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 278 of 2004

Prava Fernadis

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2005) 04 OHC CK 0058

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

Bench : Division Bench

Advocate : Saswata Patnaik, L. Mishra and S. Rath, for the Appellant; A.G.A. for Opp. Parties 1 and 3 and Sr. Standing Counsel (Central) for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Roy, C.J.—By this writ petition, the Petitioner has prayed for issue of a writ of habeas corpus, quashing the order dated 3.6.2004 issued by the District Magistrate, Sundargarh, in exercise of power under Sub-section (2) of Section 3 of the National Security Act, 1980, directing the detention of the Petitioner in Special Jail, Rourkela, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The said order of detention was served upon the Petitioner on 4.6.2004 in the said Special Jail where the Petitioner was detained in connection with some other police cases. Thereafter, the grounds of detention dated 7.6.2004, drawn up by the said District Magistrate, Sundargarh were served upon the Petitioner on the same day i.e., 7.6.2004 while he was in custody in the Special Jail, Rourkela. It transpires from the record that on 14.6.2004, the Government of Orissa, Home (Special Section) Department informed the Petitioner that the State Government had approved the order of detention under which the Petitioner was detained in the said Special Jail. It further transpires that the District Magistrate by his order dated 18.6.2004 intimated the Petitioner that the case under the National Security Act

against him has been referred to the Advisory Board by the State Government and if he wished he can make a representation before the said Advisory Board.

2. The Petitioner in this writ application has stated that after receiving the ground of detention, he made representations through the Superintendent of the Special Jail, Rourkela, addressed to the State Government, Central Government and Advisory Board constituted under the National Security Act. The Government of Orissa by his order dated 30.7.2004 informed the Petitioner that the Advisory Board constituted under the National Security Act has opined that there were sufficient causes for detention of the Petitioner. On the basis of such opinion, the State Government had confirmed the order of detention of the Petitioner for a period of twelve months.

3. Learned Counsel for the Petitioner submits that even though the Petitioner made representations to the State Government, Union Government and the Advisory Board through the Superintendent of the Special Jail but the said representations were not forwarded. It is further contended that if, as a matter of fact, the representations were forwarded to the State Government as well as the Union Government, the same have not been considered by either of the said Government while confirming the order of detention.

4. On the other hand, from the affidavit filed on behalf of the Government of Orissa as well as the Central Government, it appears that the Petitioner did not make any representation either to the State Government or to the Union Government or the Advisory Board. Thus, it is stated that the question of consideration of such representation did not arise at all. Learned Addl. Government Advocate submits that the Petitioner having not given any representation whatsoever, he cannot claim for non-consideration of representations said to have been made by him and on that ground allegation of any prejudice caused, is also untenable.

5. No copy of the representations alleged to have been made by the Petitioner, has been annexed to the writ application nor learned Counsel for the Petitioner is able to produce a copy thereof during hearing of this case before the Court. In these circumstances, we are constrained to hold that the Petitioner did not make any representation either before the State Government and the Union Government or before the Advisory Board.

6. Even otherwise on perusal of the grounds of detention dated 7.6.2004, we do not find any illegality or impropriety in the opinion expressed by the Advisory Board constituted under the National Security Act to the effect that there was sufficient cause for detention of the Petitioner under the provisions of National Security Act so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

7. Learned Counsel for the Petitioner relying upon the decision of the Supreme Court in the case of Ramesh Yadav Vs. District Magistrate, Etah and Others, , contended that a person cannot be detained under the provisions of the National

Security Act on the ground that he was likely to be released on bail in a criminal case. In this context, he contended that the Supreme Court in the aforesaid decision has categorically held that merely on the ground that an accused in detention as an under trial prisoner was likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. From the aforesaid decision of the Supreme Court, we find that in paragraph-4 of the said judgment, the ground of detention in respect of the Petitioner in that case has been quoted. We reproduce the same hereunder:

At this time you were detained in the District Jail, Mainpuri and you have filed an application for bail in the Court of law which is fixed for hearing on September 17, 1984, and there is positive apprehension that after having bail you will come out of the jail and I am convinced that after being released on bail you will indulge in activities prejudicial to the maintenance of public order.

8. In the context of the aforesaid ground of detention in respect of the Petitioner in that case, the Supreme Court expressed the view that merely (emphasis supplied) on the ground that an under trial prisoner was likely to be enlarged on bail, an order of detention under the National Security Act should not ordinarily be passed. The Supreme Court has further held that in such a case if the apprehension of the detaining authority was true, the bail application had to be opposed and in case bail was granted, challenge against the said order in the higher forum, is to be raised. But, in the instant case, we find that though one of the grounds of detention of the Petitioner was that there was every possibility of the Petitioner being released on bail but there were various other grounds showing that in fact the Petitioner was involved in large number of criminal activities starting from the year 1996 till immediately before the order of detention was passed against him. We are, therefore, of the view that the apprehension of the detaining authority that if the Petitioner is released on bail, there was likelihood of the Petitioner indulging in similar activities, was not based only on the ground that he was likely to be released on bail sooner or later. Having found that the order of detention was passed on many other facts showing the criminal propensity of the Petitioner and his alleged involvement in series of criminal activities, we are of the view that the ratio of the decision in the case of Ramesh Yadav (supra) of the Supreme Court cannot be applied to the facts of the present case. We are of the further view that the criminal antecedent of the Petitioner goes in support of the order of detention passed by the authorities under the National Security Act. We, therefore, conclude that in the facts and circumstances of the case, the apprehension of the detaining authority that it was necessary to detain the Petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, is justified, as opined by the Advisory Board constituted under the National Security Act.

In the result, the writ petition is dismissed.

M.M. Das, J.

9. I agree.