
(2002) 08 OHC CK 0037
In the Orissa High Court
Case No : O.J.C. No. 16393 of 2001

Pua alias Manas Ranjan Das	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2002) 94 CLT 451 : (2002) OLR 791 Supp

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : R.K. Patnaik, S.C. Puspalak, S.C. Beura, S.S. Jena, A. Panda and A.N. Samantray, for the Appellant; A.K. Mohanty (A), A.S.C. (Central) (For O.P. No. 1) and D. Mohapatra, Additional Government Advocate (For O.Ps. 2 and 3), for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—By an order dated 20.8.2001 passed by the District Magistrate, Cuttack under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as "the Act, 1980") the petitioner was detained in the Circle Jail, Cuttack at Choudwar. He was served with the grounds of detention by a communication dated 20.8.2001. The Government of Orissa, Home (Special Section) Department approved the said detention order by order dated 25.8.2001. Thereafter, the case of the petitioner was placed before the Advisory Board u/s 10 of the Act, 1980 and the Advisory Board was of the opinion that there was sufficient cause for detention of the petitioner. By order dated 5.10.2001 passed u/s 12(1) of the Act, 1980, the Government of Orissa confirmed the order of detention. The petitioner then filed representation dated 15.11.2001 to the Government of Orissa against the order of detention. But by a communication dated 26.11.2001 the petitioner was informed that the State Government after consideration of the representation of the petitioner has been pleased to reject the same. Aggrieved, the petitioner has filed this writ petition for quashing the order of detention dated 20.8.2001 passed by the District

Magistrate, Cuttack.

2. Mr. S. C. Puspalak, learned counsel for the petitioner submitted that when the impugned order of detention was passed on 20.8.2001 by the District Magistrate, Cuttack, the petitioner was already in jail custody having been arrested on 30.7.2001 in connection with Purighat P.S. Case No. 136 dated 30.7.2001 u/s 394, IPC /25/27 of the Arms Act/9(b) of the I.E. Act. Hence, there was no necessity whatsoever for passing the order of detention under the Act, 1980. He further submitted that although in the grounds of detention, the District Magistrate has stated that there is every likelihood that the petitioner may get bail and on being enlarged on bail, the petitioner would again indulge in further anti-social activities prejudicial to maintenance of public order, there was no material whatsoever to support the conclusion of the District Magistrate in the grounds of detention that there was every likelihood that the petitioner may get bail.

3. Mr. Mohapatra, learned Additional Government Advocate, on the other hand, submitted that the grounds of detention, will show that the District Magistrate, Cuttack was well aware of the fact that the petitioner was detained in jail custody having been arrested on 30.7.2001. But he felt that the order of detention under the Act, 1980 was required to detain the petitioner in jail custody as the petitioner was likely to be released on bail and if he was enlarged on bail, he would again resort to anti-social activities prejudicial to the maintenance of public order. According to Mr. Mohapatra, learned Addl. Government Advocate, therefore, there was no infirmity in the order of detention.

4. It has now been settled, by the Apex Court in the series of decisions including the case of *Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others*, that the conclusion of the detaining authority that a person already in custody is likely to be released on bail has to be based on cogent material and cannot be the ipse dixit of the District Magistrate. The relevant portion of the judgment of the Supreme Court in *Amritlal and Ors. v. Union Government through Secretary, Ministry of Finance and Ors.* (supra) is quoted herein below :

"In *Agustin*'s decision 1994 Sup. (1) SCC 597 (supra) this Court also placed strong reliance on an earlier but off-cited decision of this Court in *Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others*, wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention."

5. Applying the law laid down by the Apex Court in the aforesaid case of *Amritlal and Ors. v. Union Government through Secretary, Ministry of Finance and Ors.*

(supra), we find that the only observations made by the District Magistrate in the grounds of detention are, as follows :

"*** ** You are at present in the jail custody after being arrested on 30.7.2001 and there is every likelihood that you may get bail and once enlarged on bail, you would again indulge in further anti-social activities prejudicial to maintenance of public order. So with a view to preventing you from acting in any manner prejudicial to the maintenance of public order, the order of detention under Sub-section 2 of Section 3 of the National Security Act, 1980 was passed against you.

*** **"

It will be clear from the aforesaid observations of the District Magistrate that there is no mention whatsoever that any bail application has been moved for release of the petitioner on bail after he was arrested on 30.7.2001 in connection with Purihat P.S. Case No. 136 dated 30.7.2001.

6. In the counter affidavit filed on behalf of the Opp. party No. 2 also there is no mention that any bail application was moved which was likely to be considered by the Court for release of the petitioner from jail custody. Paragraph - 5 of the counter-affidavit filed on behalf of the Opp. party No. 2 is extracted herein below :

"5. That it is respectfully submitted that the grounds of detention issued by the Dist. Magistrate on 20.8.2001 reveal that the petitioner was in jail custody after being arrested on 30.7.2001 and there was every likelihood that he might get bail and once released on bail, he could further indulge himself in antisocial activities prejudicial to the maintenance of public order. Therefore, the apprehension of the Detaining authority is justified. So with a view to preventing him from acting in any manner the order of detention has been passed against the petitioner which is legal and justified.

7. We are, thus, of the view that the conclusion of the District Magistrate in the grounds of detention that there is every likelihood that the petitioner may get bail is not supported by any cogent material and on this ground alone, the order of detention is liable to be quashed and it is not necessary to deal with the other grounds taken in the writ petition.

8. For the aforesaid reasons, the impugned order dated 20.8.2001 passed by the District Magistrate, Cuttack (Annexure-1) is quashed and the petitioner - Pua alias Manas Ranjan Das be released forthwith unless his detention is wanted in connection with some other cases.

The writ petition is accordingly allowed.

M. Papanna, J.

I agree.