
(1996) 08 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 4744 of 1996

Ramesh Dalai

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:

National Security Act, 1980 — Section 10, 12, 3(2), 3(4), 3(5)
Penal Code, 1860 (IPC) — Section 294, 323, 341, 354, 506

Citation : (1996) 82 CLT 641 : (1997) CriLJ 2589

Hon'ble Judges : S.N. Phukan, C.J.;A. Pasayat, J

Bench : Division Bench

Advocate : Agasti Kanungo and S.R. Mishra, for the Appellant; B.L.N. Swamy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, C.J.—This habeas corpus petition has been filed by Ramesh Dalai (hereinafter referred to as "the detenu") against the order of detention passed by the District Magistrate, Cuttack on 19-9-1995 in exercise of power conferred under Sub-section (2) of Section 3 of the National Security Act, 1980 (in short, "the Act"). The detention order is Annexure-1, and the grounds of detention dated 19th September, 1995, which was served on the reference on the same day is annexed to Annexure-1. The main ground for detention is as-follows:

On 9-9-1995 at about 9.30 p.m. you appeared at the busy Jagatpur Square on National Highway No. 5 and forcibly detained a Trakker (Regd. No. 01-05-7169) which used to carry passengers between Cuttack and Choudwar. You restrained the driver from taking passengers from the Jagatpur Square and forcibly dragged the passengers who were sitting inside the Trakker. You forcibly brought a lady passenger to the Trakker and abused her. You also outraged her modesty. When the driver protested you abused the driver and claimed yourself as the "Dada" of the area. You threatened with a bhujali to kill all. You assaulted the driver and caused bleeding injuries. You brought out a bhujali and threatened people

present not to go against you or to give evidence against you. Because of your such violent anti-social activities some passengers of the trakker fled away to save their lives. Panic stricken people ran away. Shop keepers felt unsafe of their property and closed down their shops. Vehicular traffic on the busy National Highway No. 5 came to a standstill. The entire area was isolated for some time. An essential service like transport could not be provided to the people for some time. Normal . avocations of the people of that area were paralysed and public order was completely jeopardised. This refers to Jagatpur P.G. Case No. 105 dated 9-9-1995 Under Sections 341/323/294/354/506, IPC. You were subsequently arrested on 13-9-1995 and a bhujali was seized from your possession.

2. From the counter-affidavit we find that the detention, order was sent to the State Government in the Home Department on 23-9-1995 together with the grounds of detention and other connected papers which were received by the State Government on the same day. The detention order was approved by the State Government on 29-9-1995, i.e. within twelve days as required u/s 3(4) of the Act, and it was duly communicated to the District Magistrate, Cuttack by message dated 29-9-1995. Thereafter the case of the defence was referred to the Advisory Board constituted u/s 10 of the Act on 29-9-1995, i.e., within three weeks from the date of detention as required under the Act. The Advisory Board considered the same on 20-10-1995 and submitted its report along with the opinion and the proceeding of the Board to the State Government on 26-10-1995, i.e., within seven weeks from the date of detention, which was within the prescribed period under the Act. After receipt of the report of the Advisory Board, the detention order was confirmed u/s 12(1) of the Act, and direction was given that the detenu-petitioner shall be detained for twelve months vide order dated 3-11-1995. Said order was served on the detenu on 10-11-1995. The detenu also submitted a representation on 16-5-1996, but the same was rejected by the State Government vide order dated 1 -6-1996, and due communication was given to the detenu on 3-6-1996, as 2-6-1996 was a Sunday.

3. We find from the records that while approving the order of detention on 29-9-1995, the said order alone with the grounds of detention was sent to the Central Government as required under Sub-section (5) of Section 3 of the Act.

4. From the facts indicated above, it is absolutely clear that all the actions of the State Government were within the prescribed time under the Act. Even the representation of the detenu was considered and rejected without any delay. Therefore, on this ground the detention order cannot be faulted.

5. Main submission made by learned counsel for detenu is that the grounds did not attract the public order situation. We have heard learned counsel for parties, perused the ground as indicated above, and we have no hesitation in holding that in view of catena of decisions of the Apex Court and various High Courts, the detention order was rightly passed as the activities of the detenu attracted public

order situation and by such action of the detenu the even tempo of life of the community was at stake. The basic difference between "public order" and "law and order" situations have been elaborately dealt with by one of us (Pasayat, J.) in *Juganta Kumari Khora Vs. State of Orissa and Another*, as follows:

While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, while "public order" has a narrow ambit and public order would be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the Public Order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise the problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular emotion of disorder that helps us distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on its facts.

Applying the principles indicated, there cannot be an iota of doubt that situations described in the grounds of detention have unmistakable nexus with public order.

6. For the aforesaid reasons, we dismiss the writ petition.

A. Pasayat, J.

7. I agree