

(2003) 03 OHC CK 0081
In the Orissa High Court
Case No : WPCRL No. 61 of 2002

Ramesh Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Arms Act, 1959 — Section 25
National Security Act, 1980 — Section 3, 3(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2003) 03 OHC CK 0081

Hon'ble Judges : Pradip Mohanty, J; A.K. Patnaik, J

Bench : Division Bench

Advocate : B.N. Udgata, A.K. Nayak, B.K. Sinha, D.R. Bhakia and D.R. Samantray and S.D. Das, for the Appellant; M.K. Mohanty, Additional Government Advocate for O.Ps 1 and 2, P.K. Parhi, A.S.C. (Central) for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is a habeas corpus petition filed by the Petitioner challenging the order dated 9.9.2002 of the District Magistrate, Ganjam detaining the Petitioner under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short "the Act").

2. The relevant facts briefly here are that while the Petitioner was in the intermediary judicial custody in Circle Jail, Berhampur vide Baidyanathpur P.S. Case No. 116 of 2002 dated 22.5.2002 under Sections 147/148/294/323/325/426/307/149/IPC/25 Arms Act/4 E.S. Act, the impugned order of detention was passed by the District Magistrate, Ganjam. Thereafter by a communication dated 10.9.2002 the grounds of detention were served on the Petitioner and the matter was referred to the Advisory Board. The Petitioner submitted a representation addressed to the Chairman, Advisory Board and the Secretary to the Government of Orissa, Home Department. After hearing the Petitioner on 8.10.2002 and after considering his representation and after

hearing the detaining authority and considering the grounds of detention and other documents, the Advisory Board expressed the opinion that there was sufficient cause to detain the Petitioner under the Act. The State Government after considering the opinion of the Advisory Board confirmed the order of detention vide Home (SS) Department order No. 5287/c dated 25.10.2002. Aggrieved, the Petitioner has filed this writ petition with a prayer to quash the order of detention.

3. Mr. Das, learned Counsel for the Petitioner submitted that although several grounds have been taken in the writ petition challenging the order of detention, the order of detention can be quashed only on the ground that there was no material before the detaining authority to come to the conclusion that the detenu was likely to be released on bail. In support of the aforesaid contention he referred to the grounds of detention to show that there was no material, whatsoever, discussed by the District Magistrate, Ganjam in support of his conclusion that the Petitioner was trying to come out from the jail. He cited a decision of the Apex Court in *Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others*, , as well as the decision of a Division Bench of this Court in *Srikanta Kumar Sahu " Golia v. State of Orissa and Anr. 94 (2000) CLT 56*, for the proposition that there must be cogent material before the detaining authority to show that the detenu was likely to be released on bail before passing of detention order in a case where the detenu is already in jail custody.

4. Mr. Mohanty, learned Addl. Government Advocate relied on the grounds of detention and in particular the portion of the said grounds of detention where the incident of 6.9.2002 has been discussed to show that efforts have been made for releasing the Petitioner on bail by arranging money through gangsters.

5. In *Amritlal's* case (supra), the Supreme Court held:

In *Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi* 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.

6. It will be clear from the aforesaid judgment of the apex Court in *Amritlal's* case that where a person is already in custody, there must be cogent material before the detaining authority that the detenu is likely to be released on bail. This inference has to be drawn by the detaining authority from the available material on record and must not be the ipse dixit of the authority passing the order of detention. Applying the aforesaid law in the present case we find that

although the Petitioner was in custody, the District Magistrate took the view that his detention was necessary by the order under the Act, 1980 as the Petitioner was trying to come out from the jail by arranging money through gangsters by extortion. The exact language of the detaining authority as recorded in the grounds of detention is to the following effect:

You are presently in judicial custody at circle jail, Berhampur in connection with B.N. Pur P.S. Case No. 116 dt.22.05.2002 u/s 147/148/294/323/325/426/307/149/IPC/25 Arms Act/4 E.S. Act.

The incident on 6.9.2002 as mentioned at last para of page-3 clearly reveals that you are trying to come out from jail by arranging money through your gangsters by extortion.

We are afraid, the satisfaction that the detaining authority must record, as per the law laid down by the apex Court as discussed above, is not that the detenu is trying to come out from jail, but that "the detenu is likely to be released on bail". Mere attempt on the part of the detenu will not be enough for recording a satisfaction that the detenu is likely to be released on bail unless there are other materials to show that there is possibility of the detenu being released on bail on the materials available before the detaining authority. In fact, in Amritlal's case (supra) the satisfaction recorded by the detaining authority was "the likelihood of the detenu moving an application for bail" and the Supreme Court held that his reasoning is different from "likelihood to be released on bail" and is not sufficient compliance with the requirement of law as laid down by the earlier judgment of the apex Court in the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, Paragraphs 6 and 7 of the judgment of the apex Court in Amritlal's case (supra) at page 3676 and 3677 as reported in the AIR are quoted herein below:

6. The requirement as noticed above in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, that there is "likelihood of the Petitioners being released on bail" that however is not available in the reasoning as provided by the concerned officer. The reasoning available is the "likelihood" of his moving an application for bail" which is different from "likelihood to be released on bail". This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the Petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

7. In the present case, there is no such satisfaction recorded by the detaining authority in the grounds of detention that the detenu is likelihood to be released on bail and there are in fact no materials on record to show that the detenu was likely to be released on bail. It has not been brought to our notice that the

detenu had in fact filed an application for bail before the appropriate Court and such application was under consideration. We, therefore, have no option but to quash the order of detention and it is not necessary for us to go into the other grounds of challenge to the order of detention.

8. The writ application is accordingly allowed and the impugned order of detention dated 9.9.2002 passed by the District Magistrate, Ganjam, Chatrapur is quashed and the opposite parties are directed to release the Petitioner - Ramesh Jena forthwith unless he is wanted in some other case.

Pradip Mohanty, J.

9. I agree.