

(2007) 09 OHC CK 0030

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 233 of 2007

Ranjit Kumar Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-09-2007

Acts Referred:

Arms Act, 1959 — Section 25, 27, 29
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 186, 294

Citation : (2007) CLT 1244 (Suppl CrI)

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

Bench : Division Bench

Advocate : Debasis Sarangi, for the Appellant; S. Patnaik, C.G.C. For O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—This Writ Petition has been filed in the nature of Habeas Corpus challenging the order of detention dated 29.3.2007 passed by the District Magistrate, Ganjam Chhatrapur u/s 3(2) of the National Security Act, 1980. It appears that the detention of the Petitioner was also confirmed by the Advisory Board by its Order Dated 21.5.2007. By virtue of said order, the Petitioner appears to have been detained with effect from 29.3.2007. There are several grounds in support of the said order of detention.

2. The order of detention has been challenged by the Petitioner (while in detention) only on the ground that in the said order the detaining authority has not recorded his satisfaction of the likelihood of the Petitioner being granted bail in the criminal cases pending against him, although the detaining authority has taken into account the fact that the Petitioner had filed a bail application before the Learned S.D.J.M., Berhampur. Learned Counsel for the Petitioner submits that in absence of the detaining authority recording his satisfaction that the Petitioner is likely to be released on bail, such order of detention is to be quashed. Learned

Counsel for the Petitioner further submits that on similar ground this Court has earlier passed Order Dated 28.2.2007 by quashing the order of detention in the case of Daba @ Sudarsan Das v. State of Orissa & two others, in W.P. (Crl.) No. 516 of 2006: (2007) 37 OCR 870.

3. Learned Counsel for the State when asked, could not point out from the detention order, any recording of such satisfaction by the detaining authority. In fact the Petitioner has raised a specific ground on that point in ground No. E at page-4 of the petition, which is quoted below:

For that as already submitted when the detention order was passed the detenu was in intermediary judicial custody and in the grounds of detention, it has only been mentioned that after his bail application was rejected by the Learned S.D.J.M., Berhampur, he has moved the Hon''ble Court. Nowhere, the detaining authority has recorded his satisfaction that there is likelihood of the Petitioner to be released on bail, as required. However, fact remains that on the very day bail application of the Petitioner was rejected by the Learned Court of Sessions. In absence of requisite satisfaction, the detention order is unjustified and illegal.

4. In the counter affidavit filed by Opposite Party No. 2 (detaining authority) dated 30.8.2007 in paragraph-17 it is stated as follows:

That in reply to the averments made in the Grounds D & E of the writ application this deponent has no comments to offer.

From such denial it would be clear that Opposite Party No. 2 has no comments to offer against the contention raised by the detainee.

5. It appears that the Petitioner was in judicial custody in Circle Jail, Berhampur in Berhampur Town P.S. Case Nos. 183 dated 20.9.2006 under Sections 147/148/506/307/149, I.P.C./25 & 27 Arms Act and 29 dated 12.3.2007 under Sections 147/148/186/294/506/431, I.P.C./27 Arms Act. The Petitioner had applied for bail before the S.D.J.M., Berhampur and the same has been rejected. This part was also taken note of by the detaining authority. Apart from that the fact that the Petitioner had moved this Hon''ble Court against such order of rejection has been noted. But no satisfaction has been recorded that the detenu is likely to be released on bail.

6. While perusing the recommendation for detention made by the Superintendent of Police, Berhampur, we find from the last paragraph at page-11 of the said recommendation, is to the following effect:

At present the anti social is in jail custody being remanded in B. Town P.S. Case No. 29/07 after surrender in B. Town P.S. Case No. 170, 182 and 183/06. He has moved to the Hon''ble Court for his release on bail in case No. 29/07 vide extract of order sheet of Court of S.D.J.M., Berhampur dated 29.3.07 (Annexure-XXXVI) and there is every chance of his release on bail.

7. On the basis of the aforesaid recommendation, the detaining authority has

issued the order of detention and in paragraph-4 at page 9 of the Grounds of Detention, the detaining authority has noted the following:

At present you are in jail custody being remanded in B. Town P.S. Case No. 29/07 after surrender in B. Town P.S. Case No. 170, 182 and 183/06. You have moved to the Hon"ble Court for your release on bail in case No. 29/07 vide extract of order sheet of S.D.J.M., Berhampur dtd. 29.3.07 (Annexure-XXXVI).

On perusal of the above, it would be clear that the Superintendent of Police, Berhampur in his recommendation has clearly noted that "there is every chance of his release on bail" in the last paragraph at page-11 of his recommendation, which is noted hereinabove. It is indeed inexplicable how these very important words which would indicate the relevant "subjective satisfaction" of the detaining authority have been omitted. This omission being glaring this Court is left with no alternative than to accept the contention raised by the Petitioner. We therefore, think it appropriate to direct the Registrar (Judl.) to send a copy of this order to the Secretary, Home (Spl. Section) Department for their information and necessary action in the matter.

8. In view of the above facts, we are of the opinion that in the instant case the detention order cannot be sustained inasmuch as there is no recital in the grounds of detention that the Petitioner's bail application is likely to succeed in connection with Berhampur Town P.S. Case Nos. 183 dated 20.9.2006 under Sections 147/148/506/307/149, I.P.C./25 & 27 Arms Act and 29 dated 12.3.2007 under Sections 147/148/186/294/506/431, I.P.C./27 Arms Act and further he is likely to be enlarged on bail in those cases. Therefore, the vital link being "the subjective satisfaction of the detaining authority, that there is likelihood of the detenu being released on bail" is missing. Therefore, the detention order suffers from serious infirmity of law and in view of the decision of this Court in the case of Daba @ Sudarsan Das (supra) this Court is left with no alternative than to set aside the order of detention dated 29.3.2007 (Annexure-1) and direct that the Petitioner-Ranjit Kumar Nayak be set at liberty forthwith, if his detention is no longer required in connection any other case.

9. The Habeas Corpus petition is allowed. No costs.

Writ application allowed.