
(2005) 03 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 271 of 2004

Rupesh Kumar Samal alias Setu alias Sweta

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Arms Act, 1959 — Section 25, 27
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 110
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2005) 03 OHC CK 0012

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

Bench : Division Bench

Advocate : Savitri Ratho, M.K. Das and D. Shit, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner in this application under Article 226 of the Constitution seeks for issue of a writ quashing the order of detention dated 9.8.2004 passed by the District Magistrate-cum-Collector, Angul in Annexure-1 to the writ petition.

2. By the impugned order dated 9.8.2004, the District Magistrate-cum-Collector, Angul exercising power under Sub-section (2) of Section 3 of the National Security Act, 1980 recorded that he was satisfied that with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of the public order it was necessary to direct that the Petitioner who was in judicial custody in Juvenile Jail, Angul since 9.7.2004 in connection with Jarapada P.S. Case No. 85 dated 22.5.2004 be detained in the said Juvenile Jail, Angul until further orders. While in detention pursuant to the order under Annexure-1, the Petitioner was served with the grounds of detention on 12.8.2004 in Annexure-2 to the writ petition.

3. After the said order of detention and the grounds of detention were served on the Petitioner, it is the case of the Petitioner that along with the grounds of detention various other documents were enclosed making it unnecessarily bulky and further, though the Petitioner expressed that he did not know English, many of the documents were written in English and translated copies thereof in Oriya were not supplied to the Petitioner, for which he could not file a representation immediately. The Petitioner has further submitted that though the District Magistrate-cum-Collector, Angul has not referred to the statements of individual witnesses in the order of detention or in the grounds of detention, the statements of witnesses recorded during the course of investigation were unnecessarily enclosed along with the grounds of detention for which the Petitioner was totally confused and prejudiced. It appears from the records that the detention order was approved by the State Government and it was directed by order dated 18.8.2004 in Annexure-3 to the writ petition that the Petitioner shall be detained in the Juvenile Jail until further orders. Subsequently, without supplying the copies of the Oriya translations of the English documents enclosed with the grounds of detention under Annexure-6, the Petitioner was asked by the District Magistrate-cum-Collector, Angul to file this representation before the Advisory Board if he so chooses. Subsequently on 4.9.2004 translated copies of the English documents enclosed to the grounds of detention were supplied to the Petitioner but by that time, the Petitioner had already made a representation to the Advisory Board. According to the Petitioner, the said representation made by him was never considered and was mechanically rejected by the State Government. Under letter No. 796 dated 4.9.2004, the Petitioner was informed about the sitting of the Advisory Board on 8.9.2004 at 4.30 P.M. Accordingly, the Petitioner handed over Anr. representation to the Chairman of the Advisory Board on 8.9.2004. The Petitioner alleges that the said representation was not given due consideration by the Advisory Board.

4. Though Miss. Ratho, learned Counsel for the Petitioner agitated various grounds in support of her contention but we are of the view that this case can be disposed of only on one ground, i.e., as to whether the criminal activities attributed to the Petitioner amounted to an act which is prejudicial to the maintenance of public order.

5. On perusal of the grounds of detention, we find that one police case bearing Jarapada P.S. Case No. 55 dated 22.5.2004 was registered against the Petitioner under Sections 147/148/341/294/427/353/342/395/307/506/149 I.P.C. read with Sections 25 and 27 of the Arms Act. Apart from the above, it appears that two cases were registered against the Petitioner at Bantala Police Station, one of which is a proceeding u/s 110 Code of Criminal Procedure and the other is mainly for the offence u/s 379 I.P.C. Another case was registered at Purunakote Police Station on 11.10.2003 i.e., about ten months prior to the order of detention passed against the Petitioner which was under Sections 341/294/353/34 I.P.C. All other grounds mentioned in the grounds of detention pertain to some Station Diary Entries made against the Petitioner and none of those Station Diary Entries

indicate that any case was registered thereon against the Petitioner except Jarapada Police Station Case No. 55 dated 22.5.2004. With regard to the other cases registered against the Petitioner, we have no hesitation to hold that the said cases have nothing to do with the maintenance of public order. Hence, registration of those cases against the Petitioner could not have formed the grounds for detention of the Petitioner under the provisions of the National Security Act for preventing him from acting in any manner prejudicial to the maintenance of public order. Similar, various Station Diary Entries made against the Petitioner do not disclose any case of serious nature from which a conclusion can be drawn that the Petitioner acted in any manner prejudicial to the maintenance of public order. It is, therefore, only Jarapada P.S. Case No. 55 dated 22.5.2004 registered under various Sections of the Indian Penal Code including Section 307 I.P.C. which requires our consideration. This is a solitary case where allegation of serious criminal activity has been alleged against the Petitioner. Even if the Petitioner committed the offences as alleged in the said case, we are unable to hold that the same can form a basis for passing the impugned order of detention under the provisions of the National Security Act. According to us, such a solitary incident not affecting the society, in general, of the locality where the occurrence is alleged to have taken place cannot be said to have affected the public order of that area.

6. Recently, in the case of Ashok Kumar Yadav v. State of Orissa and Ors. W.P.(C) No. 272 of 2004 disposed of on 2.2.2005 while dealing with a similar question, relying upon the decision in the case of Arun Ghosh Vs. State of West Bengal, and other decisions of the Apex Court, we have held that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep so as to affect the community at large and/or the even tempo of the life of the community, then only it becomes a breach of the public order.

7. On perusal of the grounds of detention, which was served on the Petitioner, we do not find any material whatsoever to show that the criminal acts attributed to the Petitioner had any deep effect upon the society/community at large. If the allegations made in the said cases registered against the Petitioner are proved it can at best be concluded that the said criminal acts affected an individual or a group of individuals but had no effect upon the community at large. We are, therefore, of the view that the acts attributed to the Petitioner did not amount to acts prejudicial to the maintenance of public order though the same may amount to breach of law and order.

8. Under the aforesaid circumstances and in view of the facts of the present case, as it appears from the grounds of detention, we have no hesitation to hold that the State has failed to make out a case to continue further detention of the Petitioner under the provisions of the National Security Act.

9. In the result, therefore, it is inevitable to hold that the order of detection of the Petitioner under the provisions of the National Security Act was totally unjustified and accordingly, the said order of detention dated 9.8.2004 in Annexure-1 to the writ petition is quashed. We further direct that the Petitioner-Rupesh Kumar Samal alias Setu alias Sweta be set a liberty forthwith provided his detention is not required in connection with any other case.

The writ petition is accordingly allowed.

S.B. Roy, C.J.

10. I agree.