

(2002) 09 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 14 of 2002

Sachitananda Swain alias Pintu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 3(2)

Citation : (2003) 1 ALT(Cri) 18 : (2002) 2 OLR 537

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

Bench : Division Bench

Advocate : S.R. Mohapatra, B.R. Mohahty, B.K. Raj, G.P. Panda, A. Das and G.B. Parida, for the Appellant; S.K. Das, Additional Government Advocate for O.Ps. 1 to 3 and M. Agrawal, Senior Standing Counsel (Central) for O.P. No. 4, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This Is a Habeas Corpus petition filed by the petitioner under Article 226 of the Constitution of India. By an order dated 3.10.2001 passed by the District Magistrate, Balasore under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short "the Act") the petitioner was detained in the District Jail, Balasore. The grounds for such detention were communicated to the petitioner by letter dated 7.10.2001 of the District Magistrate, Balasore. The State Government thereafter approved the order of detention by its order dated 11.10.2001. The case of the petitioner was referred to the Advisory Board under the Act by the State Government and after submission of the report of the Advisory Board, the order of detention was confirmed by the State Government by its order dated 15.11.2001. In the meanwhile, the petitioner submitted a representation dated 9.11.2001 against the order of detention before the Advisory Board, but the said representation was rejected by the State Government by its communication dated 29.11.2001 of the Government of Orissa, Home (Special Section) Department. Aggrieved, the petitioner has filed

this writ petition with a prayer to quash the order of detention and to issue a writ of habeas corpus against the opp. parties to forthwith release the petitioner from the custody.

2. Mr. Mohapatra, learned counsel for the petitioner submitted that the immediate cause for detention of the petitioner was the incident which took place on 14.9.2001. According to Mr. Mohapatra, the said incident as narrated in ground No. 13 of the grounds of detention would show that the alleged act of the petitioner was only directed against individuals and did not affect the public order. He cited the judgment of this Court in *Sankarsan Pradhan v. State of Orissa and Anr.* (1994) 7 OCR 735 in support of his submission that acts of a person directed against individuals will not amount to disturbance of public order and for such acts the ordinary law of the land has to be applied and detention orders cannot be passed.

3. Mr. S.K. Das, learned Additional Government Advocate, on the other hand, submitted that it is not just the incident of 14.9.2001 on account of which the petitioner has been detained in custody but various other incidents narrated in grounds Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the grounds of detention. According to Mr. Das, a bare reading of the said grounds would indicate that the acts of the petitioner have affected the general public and have disturbed the even tempo of public life. According, to Mr. Das, therefore, this is a fit case in which the order of detention could be passed by the District Magistrate.

4. In *Arun Ghosh Vs. State of West Bengal*, cited in the Division Bench decision of this Court in *Sankarsan Pradhan v. State of Orissa and Anr.* (supra), the Supreme Court has held that disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity and it is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. In the said judgment the Supreme Court further held "the question to ask is; does it lead to disturbance of the current of life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ?" The aforesaid test laid down in *Arun Ghose v. State of West Bengal* (supra) has been applied by Courts from time to time to find out whether a particular act affects an individual or disturbs the general tranquillity of the community so as to warrant preventive detention. Applying the aforesaid test to the present case, we find from the grounds indicated in ground Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 that the acts of the petitioner cannot be said to be directed only against a particular individual, but have disturbed the public tranquillity in general. The incident narrated in ground No. 13 is quoted herein below :

"On 14.9.2001 at about 12.30 P.M. you alongwith your antisocial associates Gadi " Ganga Rao, Buna Patnaik, Tunu Ram, Babu Jena, Chandan Jena and Hari Mallik brutally attacked one Sidhanta Mohanty S/o. Nirmal Chandra Mohanty of

Akhadasal, Sunhat under Balasore Town P.S. in a crowded public road, at Town Hall Chhak, near Balasore Women's College. Sidhanta Mohanty had gone to College to meet his cousin and protested the eve teasing of his cousin by you and your associates. The protest of Sidhanta was met with violent attack in full public view. While Sidhanta Kumar Mohanty was coming towards Town Hall crossing you alongwith your above antisocial associates armed with Bhujali, Knives, iron rod, cycle chain etc., forcibly obstructed him in the point of Bhujali on the public road and brutally attacked him. You gave a blow with knife to the head of Sidhanta and snatched away his gold chain weighing one tola from his neck....."

The aforesaid incident which took place on 14.9.2001 was in a crowded public road at Town Hall Chhak near Balasore Women's College and the allegation against the petitioner is that he alongwith his anti-social associates brutally attacked Shri Sidhanta Mohanty in such crowded public road and they were armed with Bhujali, knives, iron rod, cycle chain etc. Obviously, such an incident, which took place in a crowded public road and at 12.30 P.M. in broad day light is bound to create panic amongst public and affect the tranquillity of the general community. In our considered opinion, therefore, the incident which has been quoted in ground No. 13 and which is said to be the immediate cause for detention of the petitioner did affect the public order not Just an individual and the order of detention of the petitioner for the aforesaid incident and other incidents cannot be said to be not warranted under the Act.

5. Mr. Mohapatra next submitted that while the petitioner submitted a representation against the order of detention addressed to the Advisory Board on 9.11.2001, it was incumbent upon the State Government to have considered the said representation at the earliest and disposed of the same. He cited the decision of the Supreme Court in Rajammal Vs. State of Tamil Nadu and Another, in which the Supreme Court quashed the order of detention for the unexplained delay of five days from 9.2.1998 to 14.2.1998. Mr. Mohapatra argued that since in the present case the delay in the representation of the petitioner dated 9.11.2001 was about 20 days, this is a fit case in which this Court should quash the order of detention on the ground of delay.

6. Mr. S.K. Das, learned Addl. Government Advocate on the other hand, relied on the counter affidavit filed on behalf of the opp. parties 1 and 2 to show that the said delay in disposal of the representation has been explained. According to Mr. Das, since the delay has been explained by the Collector and District Magistrate, Balasore and the State Government, this Court should not interfere with the order of detention.

7. In Rajammal v. State of Tamil Nadu and Anr. (supra), the Supreme Court held :

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation

the words "as soon as may be" in Clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable cases-....."

It is thus clear from the aforesaid decision that the representation against an order of detention has to be disposed of as soon as may be-as provided in Clause (5) of Article 22 of the Constitution. There may be, however, some delay in disposal of representation, but if the Court finds that the delay was occasioned due to permissible reasons or unavoidable causes then the Court may not interfere with the order of detention. But if the Court finds that the delay has been occasioned due to reasons or causes which are avoidable the Court will not condone the delay but will quash the order of detention for being violated of Clause (5) of Article 22 of the Constitution.

8. Coming now to the facts of the present case, although the representation addressed to the Advisory Board by the petitioner was submitted on 9.11.2001, the same has been rejected by the State Government only on 29.11.2001 i.e., about after 20 days. The question, therefore, is whether these 20 days have been explained by the opp. parties showing permissible reasons or unavoidable causes. It appears from paragraphs 3 and 4 of the counter affidavit filed on behalf of opp. party Nos. 1 and 2 that the representation dated 9.11.2001 was sent to the State Government by letter dated 10.11.2001 without the parawise comments and as a result, the same could not be dealt with by the State Government expeditiously. This will be clear from the following averments in the counter affidavit filed on behalf of opp. party No. 1 :

"XX XX XX The representation dt. 9.11.2001 of the petitioner addressed to the N.S.A. Board was received in Home (SS) Department on 17.11.2001 from District Magistrate, Balasore vide their letter No. 787/Res/Con. dt. 10.11.2001. The District Magistrate was requested to furnish his parawise comments on the above representation vide Home (SS) Department letter No. 5935/C dt. 17.11.2001 and No. 6064/C. dated 24.11.2001. The District Magistrate, Balasore furnished his parawise comments on 25.11.2001 which was received in the Home Department on 28.11.2001."

It was only after the District Magistrate furnished his parawise comments on 25.11.2001 and the parawise comments were received by the Home Department on 28.11.2001 that the representation of the petitioner was rejected on 29.11.2001. The District Magistrate in his counter affidavit has stated :

"3. That in reply to the averments made in para-10 of the writ petition, it is submitted that the representation of the petitioner dated 9.11.2001 was submitted to the State Government vide letter No. 787/Res (Con) dated 10.11.2001. While going through the said representation, it was ascertained that

the claims of the petitioner in the representation needs clarification before submitting the parawise comments to the Government. In order to ascertain the authenticity of the claim of the detenu a copy of the same was transmitted to the Superintendent of Police, Balasore vide letter No. 789/Res (Con) dated 10.11.2001.

4. That the Superintendent of Police, Balasore after thorough examination of the claims of the detenu submitted his report on 25.11.2001 and this deponent immediately submitted the parawise comments to the State Government vide letter No. 808/Res. (Con) dated 25.11.2001. It may be appreciated that there has been no delay at all on the part of the deponent in communicating representation submitted by the detenue."

9. It is clear from the affidavits filed by the opp. parties 1 and 2 that the delay in dealing with the representation of the petitioner of approximately 20 days is on account of the fact that the District Magistrate did not send the parawise comments expeditiously to the State Government. Thus, in our opinion, the delay which could have been avoided and the District Magistrate should have been prompt enough to send his parawise comments on the representation of the petitioner to enable the State Government to dispose of the representation of the petitioner as soon as possible as provided in Clause (5) of Article 22 of the Constitution. The impugned order of detention, therefore, will have to be quashed for the delay in disposing of the representation of the petitioner against the order of detention.

10. We accordingly quash the impugned order of detention dated 3.10.2001 and its approval and confirmation by this State Government and direct that the petitioner will be released forthwith and will be set at liberty unless he is wanted in connection with some other case.

The writ petition is allowed.

M. Papanna, J.

11. I agree.