

(1997) 09 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 14670 of 1996

Sanat alias Santha Mishra alias Sanat Kumar Mishra	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 05-09-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 23(5)
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 506

Citation : (1998) CriLJ 889

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

Bench : Division Bench

Advocate : B.P. Ray, S.C. Parija, P.C. Rout, S. Pujhari and P.K. Patnaik, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Questioning legality of the detention order passed by the District Magistrate, Sundargarh in purported exercise of power u/s 3(2) of the National Security Act, 1980 (in short, "the Act") this habeas corpus application has been filed.

2. Background facts, which led to passing of detention order as evident from the order are essentially as follows :-

Sanat alias Santha Mishra (here in after referred to as "the detenu") indulged in terrorising the innocent public and was involved in a series of criminal cases like criminally intimidating the public, creating a sense of terror in the locality being armed with deadly weapon like fire-arms, explosives etc. He was also in the habit of attacking Government servants who refused to yield to his undue desires. As a result of such activities the general public were panic-stricken. On 28-16-1996, a station diary entry was registered against the detenu in the Town Police Station, Sundargarh in this regard. Seventeen instances have been highlighted to describe the diabolic acts of the detenu. The last one was on 12-10-1996. The

detenu along with associates forcibly entered into the house of the Dilip Kumar Patel situated in the Old Cinema Road, Sundargarh, and assaulted him. He threatened to do away with his life. It has been indicated that after becoming President of Private Bus Owners' Association of Sundargarh, he tried to black-mail the district administration by stopping plying of buses, taxies, trekkers and other vehicles for hours together on several occasions, without prior notice, whereby the communication system in the district was completely paralysed. By such action the detenu intended to make personal gain. He organised a gang of anti-socials. Even after arrest on 28-10-1996 in connection with Town P.S. case No. 116 of 1996, he openly asked his followers in the presence of the police to stop playing of buses. Trekkers etc. in Sundargarh town indefinitely. The traffic system in the town came to a stand-still causing a great difficulty to the general public as well as commuters from outside. The detenu terrorised the innocent shop-keepers of the town to close down their shops, which they did out of fear. The shops were re-opened in the evening only after the police organised a flag-march in the town with five platoons of Orissa Special Armed Police to instil confidence among the public, but not a single vehicle could ply. At the time of arrest, the detenu openly threatened that the police officers were under estimating his powers and he can paralyse the life in Sundargarh town and break the normalcy until he is bailed out from police custody. Even he asked his supporters to organise a befitting retaliation to the police action and his supporters armed with deadly weapons went to the market which created a sense of terror and insecurity among the general public and shop keepers. Normalcy was restored after the police had staged a flag-march in the town. On 29-10-1996 the shop-keepers requested for police protection and under police protection normal life could be restored, after using three platoons of armed police at various points under the supervision of superior police officers. Witnesses are not coming forward to depose in court of law against him out of fear. By the aforesaid anti social activities, the peace loving citizens of Sundargarh town and its surroundings are panicked, and terror-stricken. Public disorder and danger to life and property in general is imminent and there is likelihood of public disorder and danger to life and property in general in Sundargarh town, if he is allowed to move freely. It was likely that he shall again attempt to disrupt the transport communication. In order to prevent all these activities the order of detention dated 30-10-1996 was passed, copy of which is annexed as Annexure -1 to the writ application, and the grounds of detention dated 2-11-1996 are annexed as an Annexure-2 to the writ application.

3. In support of the application Mr. B. P. Ray, learned counsel has urged two points. Firstly it is urged that there has been unusual delay in disposing of the representation made by the detenu and non-application of mind is writ large because out of seventeen incidents highlighted, the detenu has been acquitted in one case after the order of detention has been passed on 5-11-1996 and in one case appeal is pending before the learned Sessions Judge, Sundargarh though it has been indicated in the grounds of detention that a revision petition is pending

before the High Court. One case was withdrawn by the Public Prosecutor on 27-1-1991 and in one case name of petitioner did not find place in the first information report. In one case charge-sheet has not been filed. In eight cases petitioner has been acquitted. It is submitted that the detaining authority took note of several cases as incidents of the detenu's involvement in various offences without considering the fact that in most of the cases the detenu was acquitted.

4. The learned counsel for State by way of reply submitted that even if it is accepted that in some cases the detenu was acquitted that cannot take away the effect of subjective satisfaction of the detaining authority about the detenu's likely resort to violence and propensity to future crimes. It is indicated that the basis of detention was the incidents dated 28-10-1996 and 29-10-1996. The detaining authority has indicated that though the prosecutions were launched in several cases due to terrorisation of witnesses nobody was coming forward to depose against the detenu.

5. The requisite subjective satisfaction of the detaining authority, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the order of detention. Where at the time when the detaining authority passed the detention order the vital fact, namely, the acquittals of the detenu in some of the cases described in the grounds of detention had not been brought to his notice and on the other hand they were withheld and the detaining authority was given to understand that the matter was pending trial, the non-placing of the material fact namely, the acquittal of detenu resulting in non-application of mind of the detaining authority to the said fact vitiated the requisite subjective satisfaction rendering the detention order invalid. (See *Dharamdas Shamlal Agarwal Vs. Police Commissioner and Another*, . However, even if a criminal prosecution fails, and an order of detention is then made, it would not invalidate the order of detention because the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in the latter, the order of detention would not be bad merely because the criminal prosecution has failed. (See *Shiv Ratan Makim Vs. Union of India (UOI) and Others*, ; *Mohd. Subrati alias Mohd. Karim Vs. State of West Bengal*, . The question of acquittal is not material, but what is material is the question of non-placing of material and vital fact of acquittal which if had been placed, would have influenced the minds of the detaining authority one way or the other. The question is whether the circumstances could possibly have an impact on the decision; and whether or not to make an order of detention.

6. In the case at hand, we find that the detaining authority has referred to

certain acquittals. The stress is on the impact of the activities dated 28-10-1996 and 29-10-1996. In fact this is clear from the following observations made by the detaining authority.

4. Above all, on 28-10-96, after your arrest in Town P. S. case No. 116/96 u/s 147/148/ 323/506/149, IPC/7 Cr. L. A. Act, you, openly asked your followers in the presence of the police to stop plying of buses, trekkers etc. in Sundergarh town indefinitely. All of a sudden, the entire traffic system in the town came to a stand-still causing great difficulty to the general public as well as commuters from outside. Apart from this, you intentionally instigated the innocent shop keepers of the town to shut down their shops for which they had to close their shops out of fear. The shops were re-opened in the evening only after the police had organised a flag-march in the town with 5 platoons of Orissa Special Armed Police on 28-10-96 to instil confidence among the public but not a single vehicle did ply. At the time of your arrest, you openly threatened that police officers are under-estimating your powers and you can paralyse the life in Sundergarh town and break the normalcy until you are bailed out from police custody. You even asked your supporters to organise a befitting retaliation to the police action and your supporters armed with deadly weapons went to the market which created a sense of terror and insecurity among the general public and shopkeepers. Normalcy could be restored after the police had staged a flag-march in the town. (Publication in daily "Sambad" dated 29-10-1996 is enclosed as Annexure-T).

5. That on 29-10-96 the shop owners requested for police protection and under police protection, the normal life could be restored using as much as three platoons of armed police at various points under the supervision of superior officers. Due to your threat the vehicular traffic which stopped plying on 28-10-96 also disrupted on 29-10-96 till 11.30 a.m. (Publication in Oriya daily "Sambad" dt. 30-10-96 is enclosed as Annexure-T1).

6. That though you are involved in a series of crimes, i.e. as many as 17 cases as narrated above, your anti social activities are increasing day by day and the witnesses are not daring to depose against you in the court of law out of fear and threat. You are even interfering in the due process of law. You are threatening the witnesses from deposing in the court of law as you have assumed the role of "God Father" of your associates who are facing trial and as a true patron of anti-social activities you wanted that the witnesses should not come forward so that the cases end up in acquittal." The impact of a single act on even tempo of life is also sufficient to warrant an order of detention. The detaining authority was conscious that there have been acquittals. He has attributed this to terrorisation of witnesses. It has been clearly indicated that acquittals would not have weighed with him as the foundation was acquittal due to terrorisation. In the circumstances, mere fact that detenu has been acquitted in some cases shown to be pending is inconsequential in view of the aforesaid aspects. This plea of detenu fails.

7. Second point urged by the detenu-petitioner is that there was delay in

disposal of the representation. So far as delay in disposal of the representation is concerned the Collector-cum-District Magistrate, Sundergarh in his additional affidavit filed on 11-2-1997 has indicated as follows :

That the detenu had made a representation to the State Government which was received on 15-11-1996 by the office of the Hon"ble Chief Minister. On 16-11-96, the Hon"ble Chief Minister's office sent it to the Home Department which was received by Home Department on 19-11 -96. On the very next day, the Home Department forwarded the application to the District Magistrate, Sundergarh calling for his parawise comments. This was received by the office of the Collector, Sundergarh on 23-11-96. Superintendent of Police, Sundargarh has furnished his comments on 26-11-1996. As the Advisory Board was scheduled to sit on 2/3-12-1996, the District Magistrate submitted the report to the Secretary to Advisory Board vide letter No. 984/C. dated 28-11-96 to avoid postal delay. However, later on, copies of the parawise comments in duplicate were sent to Government in Home Department by the deponent vide letter No. 1033/C.dated 10-12-96 on which Government took the final decision.

A bare reading of the affidavit as extracted above clearly shows that no attempt has been made to explain as to what action was being taken during some periods. Merely stating that the Superintendent of Police furnished his comments on 26-11-1996, and the District Magistrate submitted the report to the Secretary to Advisory Board on 28-11-996 is not sufficient. On the contrary it appears that copies of parawise comments in duplicate were sent to Government in Home Department on 10-12-1996. Obviously therefore, there is no cause shown for the inaction between 26-11-1996 and 10-12-1996. This itself is sufficient to vitiate the detention.

8. A preventive detention is not punitive but precautionary measure. The object is not to punish for having done something but to prevent and intercept him before he does it again. No offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonable probability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See *Rex v. Halliday* 1917 AC 260; *Mr. Kubic Dariusz v. Union of India*. But at the same time, a person's greatest of human freedoms, i.e. personal liberty is deprived, and therefore, the laws of detention are strictly construed, and a meticulous compliance with the procedural safeguards, however, technical is mandatory. The compulsions of the primordial need to maintain order in society without which enjoyment of all rights including the right of personal liberty would lose all their meanings are the true justification for the laws of preventive detention. Sometimes the deprivation of personal liberty of individuals becomes imperative to protect the society from denigrating. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of supplies of commodities necessary for the community can provide grounds for a satisfaction that similar propensities on the part of the

person concerned are likely and there is a possible future manifestation. This jurisdiction has been described as a jurisdiction of suspicion, and the compulsions to preserve the values of freedom of a democratic society and of social order sometimes merit the curtailment of the individual liberty. (See *Ayya alias Ayub Vs. State of U.P. and Another*, . To lose our country by a scrupulous adherence to the written law said Thomas Jefferson would be to lose the law itself with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters. A constitutional protection is given to every detenu which mandates the grant of liberty to the detenu to make a representation against the detention, as imperated in Article 23(5) of the Constitution. It also imperates the authority to whom the representation is addressed to deal with the same with utmost expedition. The representation is to be considered in its right perspective keeping in view "the fact that the detention of the detenu is based on subjective satisfaction of the authority concerned, and infringement of the constitutional right conferred under Article 22(5) invalidates the detention order. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of the judicial vigilance that is needed was aptly described in the following words in *Thomas Pacham sales case 1981* (6) QBD 376.

"Then comes the question, upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the Court will not allow the imprisonment to continue." Whenever there is executive invasion on personal liberty, the Court has to weigh in golden scales whether the personal liberty is to be placed at a high pedestal regardless of the social cast involved in the release of a possible renegade. Observations to similar effect were made by the Supreme Court in *Smt. Ichu Devi Choraria Vs. Union of India (UOI) and Others*, .

9. Before we part with, we may indicate the submission made by learned counsel for State that many times the lower courts are taking the view that because of quashing of the order of detention, the detenu is entitled to bail in criminal proceedings. No specific instance has been brought to our notice. However, it is made clear that quashing of an order of detention on the ground of non-observance of constitutional protections is not indicative of opinion about merits regarding grant of bail. Prayer for bail has to be considered on its own merits.

The writ application is allowed. The order of detention vide Annexure-1 is

quashed, and the detenu petitioner be set at liberty forthwith, unless he is required to be in custody in connection with any other proceeding.