

(2006) 12 OHC CK 0013
In the Orissa High Court
Case No : WP. (Criminal) No. 330 of 2006

Sanjay Kumar Jena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 144
National Security Act, 1980 — Section 14, 3(2)
Penal Code, 1860 (IPC) — Section 294, 323, 324, 34, 341

Citation : (2006) 12 OHC CK 0013

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

Bench : Division Bench

Advocate : S.D. Das, H. Satpathy, D.R. Bhokta, D.R. Sundaray, A.S. Sahu, N. Bisoi, M. Panda, D. Mhanty, B.B. Pradhan and P. Rath, for the Appellant;

Final Decision : Allowed

Judgement

M.M. Das, J.—In this Habeas Corpus petition under Article 226 of the Constitution of India, the Petitioner-detenu challenges the order of detention dated 30.3.2006 issued by the District Magistrate, Ganjam-Chhatrapur u/s 3 (2) of the National Security Act, 1980 (for short, "the Act") as illegal and unsustainable.

2. By the said impugned order of detention dated 30.3.2006, the District Magistrate in exercise of his power conferred under Sub-section (2) of Section 3 of the Act ordered as follows:-

OFFICE of THE DISTRICT MAGISTRATE, GANJAM, CHATRAPUR.

N.S.A. No. 5/2006

ORDER

No. 329/Res. Dt. 30.3.2006.

Whereas, I Shri Sanjay Kumar Singh, I.A.S. District Magistrate, Ganjam have

been directed in Government of Orissa, Home Department Order No. 5574/C Dt. 12.12.2005 to exercise the power conferred by Sub-section (2) of Section 3 of the National Security Act-1980.

Whereas I am satisfied that with a view to preventing Sanjaya Kumar Jena, age 25 years, S/o: Kokaram Jena of village-Balipadar, District-Ganjam from acting in any manner prejudicial to the maintenance of public order, it is necessary to make the following order:

Now, therefore, in exercise of powers conferred by Sub-section (2) of Section (3) of National Security Act-1980. I do hereby direct that the said Sanjaya Kumar Jena, age 25 years who is now in intermediate judicial custody in Special Sub-Jail, Bhanjanagar vide Buguda P.S. Case No. 218 dtd. 13.10.2005 u/s 341/323/294/506/34 Indian Penal Code/25 (1-B) Arms

Act and Buguda P.S. Non FIR No. 28 dated 24.3.2006 u/s 110 Code of Criminal Procedure. be detained in the Circle Jail, Berhampur until further orders.

Sd/-

District Magistrate

Ganjam, Chatrapur.

3. The order of detention was served on the Petitioner-detenu while he was in custody in connection with Buguda P.S. Case No. 25 dated 3.3.2006 corresponding to G.R. Case No. 74/2006 as an under trial prisoner in the Circle Jail, Berhampur. The grounds of detention which have been annexed as Annexure-1 to the Writ Petition was served on the Petitioner-detenu on 1.4.2006 along with a covering letter informing the Petitioner-detenu that he has got a right to make representation to the State Government u/s 8 and the Central Government u/s 14 of the Act.

4. The case of the Petitioner is that he submitted his representations under Annexures-4 and 5 on 26.4.2006 before the Central Government and the State Government respectively. However, much thereafter on 20.5.2006, the detention of the Petitioner-detenu was confirmed by the State Government and the Central Government rejected the representation of the Petitioner-detenu on 30.5.2006.

5. Counter affidavits to the Writ Petition have been filed on behalf of the Opp. Parties 2 and 3 being the State of Orissa in its Home Department and the Collector-cum-District Magistrate, Ganjam separately.

6. Mr. S.D. Das, Learned Senior Counsel for the Petitioner-detenu agitated several grounds before us contending that each of such grounds if accepted, there would be no other alternative but to quash the order of detention and allow the Writ Petition.

7. Learned Counsel for the State, on the contrary, submitted that the grounds of detention clearly show that there was ample material to justify the conclusion of

the Detaining Authority that the Petitioner-detenu was acting in a manner prejudicial to the maintenance of the public order for which his detention under the relevant provisions of the Act was very much essential for maintenance of the public order in the locality.

8. Mr. Das, Learned Senior Counsel, however, vehemently argued that the nature of the various criminal cases initiated against the Petitioner-detenu, as has been stated in the grounds of detention, would clearly establish that even accepting the said allegations made in various criminal cases, it cannot be concluded that the Petitioner-detenu was acting in a manner prejudicial to the maintenance of the public order.

9. On a careful scrutiny of the grounds of detention, we find that the Petitioner-detenu is alleged to have been involved in ten criminal cases, out of which, the first case was only a station diary entry and admittedly no FIR has been registered thereupon. Similarly, five cases are found to be under Sections 144, 107 and 110 of the Code of Criminal Procedure. The other four criminal cases relate to offences under Sections 323/379/506/341/324 Indian Penal Code.

10. Considering the nature of the allegations made against the Petitioner-detenu in the said cases as mentioned in the grounds of detention and the allegations made therein, we find that the same do not disclose any case of serious nature on the basis of which it can be held that the Petitioner-detenu acted in any manner prejudicial to the maintenance of the public order. No doubt, such criminal activities on the part of the Petitioner-detenu, as alleged, if proved, may amount to a question of law and order. Such incidents of criminal activities not affecting the society in general in the locality, where the Petitioner-detenu lives, cannot by any stretch of imagination, be said to have affected the even tempo of life of the community in the specified locality.

It is needless to mention that the Supreme Court in various decisions has laid the distinction between the maintenance of public order and maintenance of law and order.

11. Mr. Das, Learned Senior Counsel relied upon a decision of this Court in the case of Ashok Kumar Yadav Vs. State of Orissa and Others, in support of his contention that there was absolutely; no material before the Detaining Authority to come to the conclusion that the detention of the Petitioner-detenu was essentially for maintenance of public order in the locality.

12. Perusal of the decision in the case of Ashok Kumar Yadav (supra) goes to show that this Court, more or less, in similar circumstances relying upon the decision in the case of Arun Ghosh Vs. State of West Bengal, and several other decisions of the Apex Court, on the facts of the said case, came to the conclusion that the grounds of detention served on the Petitioner-detenu in the said case do not disclose that the Petitioner-detenu acted in any manner prejudicial to the maintenance of the public order and the said order of detention cannot stand the scrutiny of law and allowed the said Writ Petition.

13. Applying the principles as laid down by the Apex Court in the decisions relied upon by this Court in the case of Ashok Kumar Yadav (supra) to the facts of the present case, we are of the view that there was no material whatsoever before the Detaining Authority to come to the conclusion that involvement of the Petitioner-detenu in the criminal cases as detailed in the grounds of detention had any deep effect upon the society/community at large. At best, if accepted, the said incidents can be said to have affected either an individual or a group of Individuals but have no effect upon the society or community at large.

14. In our consider view, such alleged actions on the part of the detenu-Petitioner even if accepted to be true, will not amount to any act which can be said to be prejudicial to the maintenance of public order. At the most, the same may amount to breach of law and order.

Under the aforesaid circumstances, we hold that the State has utterly failed to make out a case for sustaining the order of detention far less continuance thereof.

15. In the result, therefore, we hold that the order of detention dated 30.3.2006 passed by the District Magistrate, Ganjam-Chatrapur against the Petitioner-detenu, namely, Sanjay Kumar Jena, under the provisions of the Act is unjustified and therefore, not sustainable. We, accordingly, quash the said Order dated 30.3.2006 issued in respect of the Petitioner-detenu and direct that the Petitioner-detenu-Sanjay Kumar Jena be set at liberty forthwith, provided his detention is not required in connection with any other case.

The Writ Petition is accordingly allowed.

Writ petition allowed.