
(2007) 07 OHC CK 0081
In the Orissa High Court

Sankar Gouda

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

National Security Act, 1980 — Section 3

Citation : (2007) CLT 1247 (Suppl Crl) : (2007) 2 OLR 606 : (2007) 1 OLR 92
Supp

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

Bench : Division Bench

Judgement

A.K. Ganguly, C.J.—This writ petition has been filed in the nature of Habeas Corpus challenging the order of detention dated 22.12.2006 on the basis of the grounds of detention dated 24.12.2006 passed by the District Magistrate, Ganjam directing detention of the petitioner-Sankar Gouda under the Sub-section (2) of Section 3 of the National Security, Act, 1980.

2. The sole ground on which the petitioner has challenged the grounds of detention is that the petitioner made a representation, which is dated 5.1.2007 and there has been inordinate delay by the State Government in disposing of the petitioner's representation and there is no cogent explanation for this delay. In the counter filed by the Collector-cum-District Magistrate, Ganjam-Berhampur-O.P. No. 3-the detaining authority, this fact of the petitioner making the representation on 5.1.2007 is accepted vide paragraph-8 thereof. The said representation was allegedly considered and by the order rejecting the representation was served upon the petitioner on 10.2.2007. Therefore, there was delay of about 35 days in the matter of consideration and disposal of the petitioner's representation. The so-called explanation as has been offered in the counter filed by the Opp. Party No. 3 is that the Superintendent of Police, Berhampur, was asked to submit his parawise comments on the representation of the detenu vide District Magistrate's letter No. 31/Res. Dated 5.1.2007, but the I.I.C. B.N. Pur P.S. submitted his report on 20.1.2007 to the S.P., Berhampur and

the S.P., Berhampur sent the parawise comments to the detaining authority on 21.1.2007. The detaining authority received the same on 22.1.2007. Then the same was sent by the detaining authority on 23.1.2007 through Speed Post to the Government of Orissa in the Home Department. The Government after careful consideration rejected the representation of the petitioner on 7.2.2007, which was communicated to the petitioner on 10.2.2007. The delay from 5.1.2007 to 20.1.2007 has been explained by saying that there was law and order situation due to filing of nomination papers in connection with Gram Panchayat Election, 2007, agitation, demonstration, rally, meetings of various political parties and Trade Unions and one meeting was called by Hindu Sammilani within the jurisdiction of B.N. Pur Police Station.

3. Considering the said explanation, this Court is of the opinion that the so called explanation cannot be accepted at all. Virtually there is no reason for the aforesaid delay on the part of the Police, more particularly, no particulars relating to the aforesaid law and order situation have been given. There is also no explanation on the part of the authorities in keeping the petitioner's representation pending for about 35 days. In the counter affidavit by Opp.Party No. 2 is virtually there is no explanation. In the explanation given by the detaining authority, it has been admitted that there was delay on the part of the State Government in disposing of the representation of the petitioner. So far as the Central Government is concerned, it does not appear that they have any explanation to offer on the representation of the petitioner at all.

4. In the context of the aforesaid facts, this Court considers it appropriate to follow the decision of this Court in *Bijaya Parida Vs. State of Orissa and Others*, where for 15 days' delay in the matter of disposal of the detenu's representation, the order of detention was quashed. Again in the case of *Ananta Parida Vs. State of Orissa and Others*, , for the same delay of 15 days in disposing of the detenu's representation, this Court quashed the order of detention.

5. In the aforesaid facts and circumstances of the case, there is no satisfactory explanation for the delay of 35 days on the part of the State Government in disposing of the representation of the detenu. As such, the order of detention cannot be sustained. We allow this Habeas Corpus petition, and set aside the order of detention dated 22.12.2006 and also the grounds of detention dated 24.12.2006 (Annexure-2). We direct that the petitioner-Sankar Gouda be immediately set at liberty, if his detention is no longer required in connection with any other case.