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**(2002) 01 OHC CK 0034**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 11004 of 2001**

Sazid Khan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 28-01-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
National Security Act, 1980 — Section 3(2)

**Citation :** (2002) 93 CLT 413 : (2002) OLR 802 Supp

**Hon'ble Judges :** P.K. Patra, J; P.C. Naik, J

**Bench :** Division Bench

**Advocate :** D. Panda, D.R. Nanda and P. Priyambada, for the Appellant; R.N. Acharya, Additional Government Advocate and D.C. Mohanty, Senior Standing Counsel (Central), for the Respondent

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## Judgement

P.C. Naik, J.—The challenge in this writ application was to the order of detention dated 2.10.2000 passed under sub-section (2) of section 3 of the National Security Act, 1980 (in short, "the Act"). The order was passed by the then District Magistrate Mr. Basant Charan Swain, who had been conferred powers under the said provision of the Act in terms of the Home Department Order No. 5386/C dated 14.09.2000.

2. After the necessary statutory safeguards were followed and the representations having been rejected and considering the opinion of the Advisory Board that there was sufficient ground for detaining the petitioner, the order of detention was confirmed by the State Government on 27.11.2000.

3. When the petition came up for hearing, the learned counsel fairly stated that it has become infructuous. He, however, submitted that the period of detention having been over, the decision may be confined with respect to the question of propriety of the affidavit filed by a District Magistrate who had not passed the impugned order of detention. Accordingly, the learned counsel for the parties were heard on the said limited question.

4. The learned counsel for the petitioner placed reliance on a decision of the Apex Court in *Biru Mahato Vs. District Magistrate Dhanbad*, In support of his contention that as the District Magistrate who had passed the impugned order of detention had not filed an affidavit, which in fact was filed by the subsequent incumbent in the said office of the District Magistrate the impugned order of detention was liable to be quashed. Per contra, the State has placed reliance on the decision of the Apex Court in *State of Punjab and Others Vs. Jagdev Singh Talwandi*, . In support of his contention that in absence of any mala fide against the District Magistrate passing the order of detention, his failure to file a counter affidavit will not vitiate the order of detention. In this context, we may also make a reference to the decision of the Apex Court in *Shaik Hanif and Others Vs. State of W.B.*, wherein it has been held that failure to file a counter affidavit by the District Magistrate who had passed the order of detention, may be an impropriety though in most of the cases it may not be of much consequence; moreso when there is no allegation of mala fide against the detaining authority.

5. We may state that the question involved in this case has already been dealt with by a Bench of this Court (Quorum P. C. Naik & C. R. Pal. JJ.) in *Chittu alias Sayed Iftekar Alli v. State of Orissa and others* 93 2002 CLT 39, wherein the effect of non-filing of an affidavit by the District Magistrate who had passed the order of detention, has been considered. The ratio of that case also applies to the case at hand. Thus, accordingly, we hold that since in the case at hand no mala fide has been alleged/attributed against the District Magistrate who had passed the impugned order of detention, non-filing of an affidavit by the said District Magistrate, in the facts and circumstances, will not be of any consequence so as to vitiate the impugned order of detention.

The writ application thus stands disposed of.

6. I agree.

P.K. Patra, J.