
(2007) 02 OHC CK 0007
In the Orissa High Court

Siba Sankar Das @ Pintu

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

National Security Act, 1980 — Section 3, 8

Citation : (2007) 104 CLT 287 : (2007) 1 OLR 516

Hon'ble Judges : A.K. Ganguly, C.J;N. Prusty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—In this Writ Petition which has been filed in the nature of a Habeas Corpus petition, the Petitioner has challenged the order of detention dated 20th August, 2006 passed against him u/s 3(2) of the National Security Act, 1980 (hereinafter referred to as the "said Act") by the District Magistrate, Ganjam, Chhatrapur.

2. Several grounds of detention were served on the Petitioner on 22nd August, 2006. This Court is not going into the validity or otherwise of those grounds of detention. This Court is proceeding to decide the Habeas Corpus petition solely on the ground of delay as the said ground, which has been raised by the Petitioner in this case, has considerable force.

3. It is not in dispute that the Petitioner has the right of making a representation u/s 8 of the said Act. On the basis of the said right the Petitioner made a representation both to the Central Government and also to the State Government on 8.9.2006. The State Government rejected the same on 21.9.2006.

4. In the counter affidavit which has been filed in this case by the detaining authority, Sanjay Kumar Singh, no explanation has been offered why there was a delay of about twelve days in the matter of consideration and disposal of the representation made by the Petitioner. Apart from that, the representation which

was made by the Petitioner to the Central Government through the State Government from jail on 9.9.2006 was forwarded by the State Government to the Central Government only on 9.11.2006 which is after a delay of about two months. The same was rejected by the Central Government on 21.11.2006. But no explanation has been offered in the counter affidavit filed by the State why there was a delay of about two months on the part of the State Government in transmitting the Petitioner's representation to the Central Government. In view of this admitted factual position, the learned Counsel for the Petitioner has relied on a Judgment of this Court in the case of Shania Begum v. State of Orissa and Ors. reported in 2000 (2) Crimes 424. In the said Judgment, the Court held that the laches on the part of the State Government in forwarding the representation to the Central Government for a period of eighteen days vitiated the detention order. In the instant case, there is a delay of about two months in transmission of the Petitioner's representation to the Central Government. Though the State Government has tried to Explain the delay by pointing that they had sent the representation to the Central Government on 15.9.2006 but in the affidavit filed by the Central Government, a different stand has been taken.

5. We have looked into the records. We have found from the records that the Petitioner's representation was initially sent to the Central Government without parawise comments. We hold that there is no valid transmission of Petitioner's representation to the Central Government inasmuch as it is the obligation of the State Government to send such representation with the parawise comments. We find that there is no sufficient explanation for the delay of two months on the part of the State Government in sending the representation to the Central Government with parawise comments.

6. In that view of the matter, we cannot uphold the order of detention passed against the Petitioner. We allow the Writ Petition, quash the order of detention dated 20th August, 2006 passed by the District Magistrate, Ganjam, and direct the Petitioner to be set at liberty forthwith, if he is not required to be detained in connection with any other case.

There will be no order as to costs.

N. Prusty, J.

7. I agree.