

**(2006) 09 OHC CK 0016**  
**In the Orissa High Court**  
**Case No : WPCRL No. 158 of 2006**

Sk. Kalim

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 06-09-2006

**Acts Referred:**

National Security Act, 1980 — Section 2(3), 3(2)  
Orissa Prevention of Gambling Act, 1955 — Section 3  
Penal Code, 1860 (IPC) — Section 294, 307, 323, 34, 341

**Citation :** (2007) CLT 157 (Suppl CrI) : (2007) OLR 157 (Suppl CrI) : (2006) 2 OLR 625

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

**Bench :** Division Bench

**Advocate :** Iqbal Shabiya and R.K. Satpathy, for the Appellant; A.G.A. (for O.Ps. 1 to 3) and Savitri Ratho, (for O.P. No. 4), for the Respondent

**Final Decision :** Allowed

## Judgement

S.B. Roy, C.J.—By this writ application, the petitioner-detenu seeks to challenge the order of continued detention dated 13.02.2006 passed by the District Magistrate, Ganjam, Chatrapur under the provisions of Sub-section (2) of Section 3 of the National. Security Act, 1980 (for short, "the Act") with a view to prevent the petitioner-detenu from acting in any manner prejudicial to the maintenance of the public order.

2. When the petitioner-detenu was in custody in connection with some police cases, on 13.02.2006 itself, he was served with the order of detention dated 13.02.2006 under Annexure-1 passed by the District Magistrate Ganjam-Chatrapur under the provisions of Sub-section (2) of Section 3 of the Act. The said order of detention dated 13.2.2006 reads as under:

Where as I Shri Sanjay Kumar Singh, I.A.S., District Magistrate, Ganjam have been directed in Government of Orissa, Home Department order No. 5574/C dtd. 12.12.2005 to exercise the power conferred by Sub-section (2) of Section 3 of

the National Security Act, 1980.

Where as I am satisfied that with a view to preventing Seikh Kalim @ Seikh Nasir Khan, aged 30 years s/o Sk. Gulam Mohammad of Khaja Sahi, P.S. B. Town, Berhampur, 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 here by direct that the said Seikh Kalim @ Seikh Nasir Khan who is now in intermediate judicial custody in Circle Jail, Berhampur vide B. Town P.S. Case No. 20 dtd. 22.1.06 u/s 307/294/354/34 IPC be detained in the Circle Jail, Berhampur until further order.

Sd/- District Magistrate Ganjam, Chatrapur.

Since then, petitioner-detenu is undergoing detention. On 15.02.2006, the detaining authority furnished the petitioner-detenu with grounds of detention, which has been annexed to the writ petition as Annexure-2. The grounds of detention refer to various station diary entries and police cases disclosing the criminal activities of the petitioner - detenu. From the recital of the grounds of detention, it appears, inter alia, as follows:

Because of activities, which are prejudicial to the maintenance of public order, you were detained under N.S.A. by the Collector and the District Magistrate, Ganjam, vide Ganjam District N.S.A. Case No. 699 vide his order No. 713/res. dated 2.06.1999 (Annexure-1). His detention order was confirmed by the Hon'ble Advisory Board, communicated vide letter No. 4708/C dated 28.07.1999 of the Home Department, Government of Orissa (Annexure-II). Registration of series of cases under the ordinary law of the land had not deterred you from acting in a manner prejudicial to public order and tranquillity. After being released from detention, you did not prefer to change your life style and again you along with your associates have started creating havoc in Berhampur Municipal Area.

3. From the afore-quoted passage and from other paragraphs of the grounds of detention, it is manifest that the petitioner's detention under the provisions of Act in the year 1999 was taken into consideration before the detaining authority issued the impugned order of detention. Thereafter, in the grounds of detention, the detaining authority took as many as four station diary entries recorded in the month of January this year. None of those entries disclose registration of any police case against the petitioner-detenu. However, in the grounds of detention, the following recent cases were taken as grounds for detention of the petitioner-detenu:

(i) Berhampur Town P.S. Case No. 20 dated 22.1.2006 under Sections 307/294/354/34 IPC.

(ii) Berhampur Town P.S. Case No. 335 dated 12.11.2005 u/s 394 IPC.

(iii) Berhampur Town P.S. Case No. 328 dated 6.11.2005 under Sections 385/34 IPC.

(iv) Berhampur Town P.S. Case No. 193 dated 23.07.2005 under Sections 323/506/294/34 IPC.

(v) Berhampur Town P.S. Case No. 176 dated 16.10.2004 u/s 3 of the Orissa Prevention of Gambling Act.

4. Only these five police cases are the cases of contemporary period when the impugned order of detention was issued. From the history given in the grounds of detention about these five cases, it does not appear that in those cases, the petitioner - detenu has committed any act which can be said to be prejudicial to the maintenance of public order. However, Paragraph-6 to 8 of the grounds of detention refer to some old cases, namely, (i) Berhampur P.S. Case No. 37 dated 12.3.1999 u/s 379 IPC; (ii) Berhampur Town P.S. Case No. 101 dated 8.6.1998 u/s 394 IPC; and (iii) Berhampur Town P.S. Case No. 133 dated 2.7.1997 under Sections 341/307/294/34 IPC. All these three criminal cases pertain to the period preceding, the earlier order of detention which was issued on 2.6.1999. In support of the impugned order of detention, it appears to us that the detaining authority took into consideration materials furnished from the records of all the above three old cases pertaining to the period preceding the order of detention dated 2.6.1999. Beside the aforesaid, the detaining authority also took into consideration the order of detention dated 2.6.1999 as one of the grounds before passing the impugned order of detention. From these facts, it appears to us that apart from some police cases of recent origin, the detaining authority came to the conclusion to issue the impugned order of detention on the basis of those old police cases apart from the earlier order of detention dated 2.6.1999 issued under the Provisions of Sub-section (3) of Section 2 of the Act.

5. Had the aforesaid old cases which relate to occurrences prior to the date of passing of the previous detention order, i.e., 2.6.1999 and had the fact that the petitioner-detenu was detained under Sub-section (2) of Section 3 of the Act, not been taken into consideration, one cannot predict as to whether the detaining authority would have passed the impugned order of detention or would have refused to pass such order.

6. The aforesaid contention of the learned Counsel for the petitioner-detenu refers to a decision of this Court in the case Babu @ Iswar Rout v. State of Orissa and Ors. 2004 (II) OLR 344. It appears that this Court expressed the same view as we have expressed above in this judgment. For this purpose also, this Court relied upon a number of earlier decisions of the Supreme Court and also this Court.

7. In the result, the order of detention dated 13.2.2006 passed by the District Magistrate, Ganjam, Chatrapur under Annexure-1 against the petitioner-detenu is quashed and the writ petition is accordingly allowed. The petitioner-detenu-Sk. Kalim be set at liberty forthwith if his detention is not required in connection with

any other case.

M.M. Das, J.

8. I agree.