
(2006) 05 OHC CK 0053

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 67 of 2006

Sri Anil Samal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2006) 2 OLR 480

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

Bench : Division Bench

Advocate : R.K. Rath, P.K. Mishra and S.K. Dash, for the Appellant; A.G.A. (for O.Ps. 1 to 3) and Asst. Solicitor General (for O.P. 4), for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The petitioner Anil Samal while in judicial custody in connection with G.R. Case No. 127 of 2004 was served with an order of detention issued under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short, "the Act") on 3.12.2005. The grounds of detention were also served upon the petitioner along with the order of detention. On receiving the order of detention, the petitioner made a representation to the Government of Orissa on 19.12.2005. The Advisory Board constituted under the Act opined that there is sufficient cause for detention of the petitioner under the Act. The Government of Orissa by order dated 1.2.2006 while rejecting the representation of the petitioner confirmed the said order of detention. The Union Government by letter dated 18.1.2006 also rejected the representation made by the petitioner. The petitioner has, therefore, preferred this writ petition for issuance of writ of habeas corpus challenging the order of detention and the rejection of his representation by the State Government as well as the Central Government.

2. Mr. R.K. Rath, learned senior counsel appearing on behalf of the petitioner contended that the order of detention cannot be sustained in law for the reasons that the said order has been passed mechanically and there is absolutely no iota

of material to show that it was necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order as has been stated in the order of detention under Annexure-1 to the writ petition. Mr. Rath further contended that though a representation was made by the petitioner against the order of detention on 19.12.2005 but the same having been disposed of on 1.2.2006, i.e. about 43 days after the filing of the representation and there being no explanation rendered for the delay in disposal of the said representation, that itself is a ground to quash the order of the Government of Orissa confirming the order of detention of the petitioner. The other limb of the argument of Mr. Rath was that the rejection of the representation by the Central Government on 19.1.2006 ex-facie shows non-application of mind on the part of the Central Government in dealing with the representation of the petitioner.

3. Counter affidavits have been filed on behalf of the State as well as the Central Government. Learned Addl. Government Advocate relying upon the counter affidavit filed on behalf of the Government of Orissa submitted that the District Magistrate, Dhenkanal after proper analysis of the materials placed before her and with due application of mind being subjectively satisfied that there was necessity for passing the order of detention u/s 3(2) of the Act to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order, passed the order of detention and no fault whatsoever can be found with the same. He further submitted that after the petitioner filed his representation, the same along with the comments thereon was promptly forwarded to the Central Government on 23.12.2005 and the State Government on proper consideration of the said representation rejected the same on 24.12.2005 which was communicated to the petitioner on 26.12.2005. He further submitted that the offences in which the petitioner was involved were serious in nature creating panic and terror in the minds of the peace loving general public of the locality and initiation of the criminal cases against the petitioner were not sufficient to curb his anti-social activities for which it was essential to detain him under the provisions of the Act.

4. Learned Assistant Solicitor General appearing on behalf of the Central Government submitted that the repeated involvement of the petitioner in criminal activities clearly shows that such action on the part of the petitioner was prejudicial to the maintenance of public order for which the representation of the petitioner was rightly rejected by the Central Government.

5. On perusal of the grounds of detention which was served on the petitioner, it is seen that the petitioner has been implicated in three criminal cases which were registered for almost similar offences of criminal trespass, criminal intimidation causing, simple hurt etc. The petitioner was granted bail by the learned S.D.J.M., Dhenkanal in two of the said cases and a bail application was also moved before the learned Sessions Judge, Dhenkanal with respect to the third case. The ground as stated in the grounds of detention appears to be that apprehending that the petitioner might be released on bail in the third case also, it was

required to detain him under the National Security Act, 1980. The reasons for passing the order of detention as stated in the said grounds are extracted hereunder:

xxx xxx xxx From the above incidents and circumstances, I am satisfied that your aforementioned activities at different occasions and different locations of Motanga P.S. area have created a sense of havoc among the general public which are prejudicial to maintenance of public order and tranquillity in the society. Besides there is apprehension that your activities are likely to create further panic and disturbance in public peace and tranquillity in the areas.

Though you are in judicial custody in Motanga P.S. Case No. 170/04, 139/04 and 175/05 vide G.R. case No. 127/04, 815/ 04 and 1070/05 respectively. The Hon"ble S.D.J.M., Dhenkanal granted bail on 28.11.2005 in Case No. 139/04 and 175/05. The bail petition in Motanga P.S. Case No. 170/04 has been moved in the Court of Hon"ble Sessions Judge, Dhenkanal vide BLAPL No. 346/05. It is highly likely that you may enlarge on bail. I am convinced that if you are released on bail you may create disturbance, which may disrupt public order and tranquillity in Motanga P.S. area and surrounding areas.

In order to restrain you from all these unlawful and illegal activities, it is felt proper to take action against you under Subsection -(2) of Section 3 of National Security Act, 1980. According to the detention order No. 1260/RES dtd. 3.12.2005 has been served on you.

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6. Mr. Rath, learned senior counsel for the petitioner relied upon a catena of decisions in support of his contention that the grounds of detention do not disclose any material to show that neither the petitioner has acted in any manner prejudicial to the maintenance of public order nor there is any substantial reason to believe that he will indulge himself in such activities which would affect the public order, in the event of his release on bail. From the said decisions he highlighted the salient differences between "public order" and "law and order". Mr. Rath also relied upon the decision in the case of Bijoy Kumar Panda v. State of Orissa and Ors. (2005) (XXXII) OCR 732 in support of his contention that the unexplained delay in disposal of the representation of the petitioner is a sufficient ground to quash the order of detention passed against the petitioner.

7. We have considered the grounds of detention in the present case, which was served on the petitioner. On careful scrutiny of the same, we find that the main cause for passing the order of detention is that there was apprehension that the petitioner might be released on bail in the third criminal case for which he has already moved an application for bail before the learned Sessions Judge, Dhenkanal. In the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, , the Supreme Court while considering an order of detention passed on the ground that the petitioner in the said case if released on bail would involve himself in activities prejudicial to the maintenance of public order held as follows:

7. It well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens.

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In the present case also the grounds of detention as extracted above would go to show that the order of detention has been passed on the assumption that it is likely that the petitioner may be released on bail and in the event of his release, he may create disturbance which would disrupt public order and tranquillity in the locality. Applying the tests laid down by the Supreme Court to the above facts of the case, we find that the order of detention passed against the petitioner in the present case cannot be upheld on this ground alone.

8. Though it is not necessary for us to consider the other contentions raised by Mr. Rath, but, however, we are constrained to note that the representation submitted by the petitioner on 19.12.2005 was disposed of by the Government of Orissa by order dated 1.2.2006, i.e., after about 43 days from the date of submission of the representation and no explanation whatsoever has been given for the delay in disposing of the said representation. The contention of the learned Addl. Government Advocate that the representation of the petitioner was rejected on 26.12.2005 has not been substantiated and no such order of rejection of the representation on 26.12.2005 has been produced before us. In the case of Bijoy Kumar Panda (supra) this Court while considering delay in disposal of the representation for about one month which was not properly explained by the Government, held that the impugned detention order deserves to be quashed on that ground.

9. We, therefore, have no hesitation to hold the order of detention is also not sustainable, as the inordinate delay in disposal of the representation made by the petitioner has not been explained by the Government of Orissa. Further we also find that the offences which have been alleged against the petitioner in the criminal cases instituted against him which are under investigation and the

materials which were available before the detaining authority do not justify the conclusion of the said detaining authority that such activities on the part of the petitioner have created a sense of havoc amongst the general public which are prejudicial to the maintenance of public order and tranquillity in the society and there is apprehension that such activities are likely to create further panic and disturbance in public peace and tranquillity. Hence, there was no material on which the detaining authority could have passed the order of detention under Sub-section (2) of Section 3 of the Act, which is impugned in this writ petition.

10. In the result, we hold that the order of detention dated 3.12.2005 under Annexure-1 passed against the petitioner, namely, Anil Samal is unsustainable and we accordingly quash the same. We further direct that the petitioner, namely, Anil Samal be set at liberty forthwith if his detention is not required in connection with any other case.

11. The writ petition is allowed.

S.B. Roy, C.J.

12. I agree.