
(2004) 04 OHC CK 0003
In the Orissa High Court
Case No : Writ Petition (Criminal) 163 of 2003

Sri Rakan ' Rakesh Biswal	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2004) 1 OLR 561

Hon'ble Judges : C.J.MANUOR01782004.htm, J;B.P. Das, J

Bench : Division Bench

Advocate : B. Panda, S. Mohapatra and B.K. Raj, for the Appellant; Additional Government Advocate For Opp. Parties 1, 2 and 3 and Addl. Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner, who is a detenu under the provisions of the National Security Act, 1980 (in short "the Act"), has filed this writ application challenging the order of his detention dated 28.7.2003 passed by the District Magistrate, Cuttack, vide Annexure-1, as also the order of approval passed by the State Government, vide Annexure-7. It may be stated here that when the order of detention was passed, the petitioner was in jail custody in connection with Madhupatna P.S. Case Nos. 130 of 2003 and 296 of 2002. The petitioner was arrested in connection with the aforesaid cases on 27.6.2003.

2. The grounds on which the order of detention has been challenged, as stated in the writ petition, inter alia, are:

(a) That there was no material before the detaining authority that the detenu was likely to be released on bail and in absence of such material, the detention of the petitioner under the Act is illegal and liable to be quashed;

(b) That the details of the cases relied on in the grounds of detention and all concerned documents have not been supplied to the petitioner along with the

grounds of detention for which the petitioner could not answer all the allegations stated therein. This aspect was specifically pleaded in the representation of the petitioner; and

(c) That the detaining authority had relied on old and stale cases in the grounds of detention in detaining the petitioner. The detenu has already been acquitted in most of the said cases, which were also not pertaining to or affecting the public order.

3. The order of detention transpires that the detenu was persistently indulging in antisocial activities prejudicial to the maintenance of public order in Madhupatna Police Station area as well as Dhenkanal. The general public did not venture to report against the detenu either before the police or in the Court of law, though seriously affected by the atrocious acts of the detenu. The detenu has no ostensible means of livelihood and earns money by antisocial activities like extortion, robbery and Dada Bati. On 18.5.2003 at about 8.45 P.M., the petitioner threw two hand bombs one after another at Jaya Jagannath Booking counter aiming at Sanjaya Kumar Jena over the issue of distribution of shares of collected booties from bus tickets. Prior to the above mentioned occurrence on 1.12.2002 at about 9 A.M. during a group clash at Chhatrabazar between the villagers of Shankarpur and Balabhadrapur, the detenu along with his associates armed with pistol opened fire resulting in injury to one Mahi alias Mahesar Behera. Besides the above, in the grounds of detention, some case numbers are cited to show the criminal activities of the petitioner.

The grounds of detention further indicate that in spite of being arrested and forwarded to custody in several criminal cases, the antisocial activities of the detenu continued unabated. At the time of passing the order of detention he was in judicial custody in connection with Madhupatna P.S. Case Nos. 130/ 2003 and 296/2002. He had filed bail petitions in the above two case and was allowed bail in Madhupatna P.S. Case No. 130 of 2003, i.e., for the offences under Sections 286 I.P.C./9 (b) of I.E. Act/5 of the Explosive Substance Act. However, the bail application filed in Madhupatna P. S. Case No. 296 of 2002 in which the petitioner was implicated in the offence under Sections 147/148/336/337/338/427/435/436/307/294/506/323/324/149 I.P.C./25/27 Arms Act/7 Cr.L.A. Act was rejected. It is further stated in the grounds of detention that there was every likelihood that the petitioner might be released on bail and once enlarged on bail, he would again indulge in further antisocial activities prejudicial to the maintenance of public order. So with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, the order of detention under Sub-section (2) of Section 3 of the Act was passed against him.

4. Mr. Mohapatra, learned counsel for the petitioner, argued that there was no cogent material in support of the averments made in the grounds of detention that if the detenu, namely Rakan alias Rakesh Biswal was released on bail, he might again indulge in serious offences causing threat to the public order. He

further submitted that there was unexplained delay of 11 days in forwarding the petitioner's representation by the State Government to the Central Government and the order of detention should be quashed.

5. First let us take up the point urged by Mr. Mohapatra, learned counsel for the petitioner that while passing the order of detention the detaining authority had not applied his mind as there was no material to show that the detenu was likely to be released on bail and in such event he was likely to indulge in such prejudicial activities affecting public order. In this regard, we may refer to the judgment of the apex Court in the case of N. Meera Rani Vs. Government of Tamil Nadu and Another, wherein it was observed as follows :

"We may summarise and reiterate the settled principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the facts of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position."

6. In this respect, it may be stated here that the authority while passing an order of detention in a case where a detenu is already in custody should take the following facts into consideration.

(i) The detaining authority must show his awareness to the fact of subsisting custody of the detenu; and

(ii) While making the order, the detaining authority is to be reasonably satisfied on cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities.

7. On perusal of the counter affidavit filed by the State, we find that the detaining authority while passing the order of detention mainly relied upon two cases, i.e., Madhupatna P.S. Case Nos. 130 of 2003 and 296 of 2002. Madhupatna P.S. Case No. 130 of 2003 dated 18.5.2003 and the offence was mainly u/s 286 I.P.C., which is bailable and triable by a Magistrate 1st Class. Though the grounds of detention disclose that in the aforesaid incident the petitioner threw bombs aiming at one Sanjaya Kumar Jena to do away with his life, the offence for which the case was registered against the petitioner entailed the petitioner to be released on bail. It shows the lenient attitude of the police authority towards accused. Release on bail in the aforesaid case could not be the

basis on the part of the detaining authority to come to the conclusion that there was likelihood of release of the petitioner in the subsequent case in which he was implicated under Sections 436 and 307 I.P.C. along with other offences.

8. There is no dispute that the detaining authority was aware of the fact of subsisting custody of the detenu. The grounds of detention only indicate that the detaining authority was apprehensive that in case the detenu was released on bail, he would again carry on his criminal activities. Merely on such apprehension an order of detention under the Act should not ordinarily be passed.

9. There is nothing to show that the authority was reasonably satisfied on cogent materials that there was likelihood of his release on bail and in view of his antecedent activities which were proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, that too, when the bail application of the petitioner in Madhupatna P.S. Case No. 296 of 2002 was rejected by the Court of Session.

10. For the foregoing reasons, we allow this writ petition and quash the order of detention passed by the District Magistrate, Cuttack in Annexure-1. The petitioner be set at liberty forthwith, if his detention is not required in connection with any other case.