
(2002) 05 OHC CK 0040
In the Orissa High Court
Case No : O.J.C. No. 15316 of 2001

Srikanta Kumar Sahu ' Golia

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

National Security Act, 1980 — Section 3(2)

Citation : (2002) 94 CLT 58 : (2002) 94 CLT 56 : (2002) OLR 387 Supp

Hon'ble Judges : Pradip Mohanty, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Debasis Panda, for the Appellant; K.C. Kar, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—This is a habeas corpus petition filed by the petitioner challenging the order dated the 10th August, 2001 of the District Magistrate, Cuttack, detaining him in exercise of powers under Sub-section (2) of Section 3 of the National Security Act, 1980 (for short, "the Act"). In the said order dated the 10th August, 2001, the District Magistrate, Cuttack, has stated that he was aware that the petitioner was present in custody and lodged in the Circle Jail, Cuttack at Choudwar, in connection with Malgodown P.S. Case No. 80 dated 31.7.2001 and has further stated that the nature of the case in which he was remanded to custody is such that he is very likely to be released on bail in near future. Along with the said order dated the 10th August, 2001, the grounds of detention were served on the petitioner in which various instances of the petitioner resorting to anti-social activities have been indicated.

2. It has been stated that on 31.7.2001, he and his associates armed with deadly weapons went to the shop of one Babuli alias Birabhanu Mohapatra with revengeful attitude on the impression that he had a hand in the arrest of his associate Chaga alias Bibekananda Sahoo in the C.D.A. Market Complex, College Square on 24.7.2001. In respect of such conduct of the petitioner on that day

Malgodown P.S. Case No. 80 dated 31.7.2001 under Sections 307/34 IPC/9(b) of the I.E. Act/25 and 27 of Arms Act was registered and he was arrested on 1.8.2001 and forwarded to the Court on 2.8.2001 and the case is under investigation. It has further been stated that on 17.9.96, he and his associates in a drunken state and armed with deadly weapons came to the flour mill of Ashique Iqbal of Patrasahi and demanded "Dada Bati" of Rs. 500/- from him and on his refusal, he and his associates abused him. "Malgodown P.S Case No. 112 dated 18.9.1996 under Sections 385/307/34 of the Indian Penal Code was registered and charge-sheet was submitted against him, but he was acquitted since no witness dare to depose evidence against him. It has also been stated that on 28.8.1997, he and his associates attacked with lethal weapons on one Khokan Das of Jobra Majhisahi who had come to Patrasahi for some work. Malgodown P.S. Case No. 107 dated 29.8.1997 under Sections 302/307/34 of the Indian Penal Code was registered against him and the petitioner was Charge-sheeted, but again he was acquitted since the witnesses of the case did not dare to depose evidence against him. It has also been stated that on 12.3.1999, he and his associates entered into the hardware shop of one Anirudha Gupta at College Square, Cuttack and demanded "Dada Bati" of Rs. 15,000/- and on his refusal, he threatened to finish him and his family members. Malgodown P.S. Case No. 34 dated 13.3.99 under Sections 384/506/34 of the Indian Penal Code was registered and after investigation, the petitioner was charge-sheeted and the case is sub-judice in the court. Again on 8.11.1999 he was flying kite on the roof of Vijaya Hotel and some incidents occurred and Malgodown P.S. Case No. 153 dated 8.11.1999 under Sections 452/354/294/506/323 of the Indian Penal Code was registered and charge-sheet has been filed. It has also been stated in the grounds of detention that on 16.11.2000, the petitioner along with his associates went to "Sulava Sauchalaya", College Square being armed with revolver and combindely attacked on Tanua alias Tanmaya Patra of Patrasahi. Malgodown P.S. Case No. 136 dated 16.11.2000 was registered and the case is under investigation. On the same day i.e. on 16.11.2000, he along with his associates forcibly took one Bata alias Trinath Das of Patrasahi, while he was standing near the ice Factory Chhak at the Patrasahi U.P. School and terrorised him at the point of revolver and inflicted blade injuries on his right hand and forced him to report to the police that Tanua Patra had caused such injuries on him. For the aforesaid incident, Matgodown P.S. Case No. 138 dated 16.11.2000 was registered and prosecution report u/s 110 Cr. P.C. has been submitted.

After narrating the aforesaid incidents, the District Magistrate, in the grounds of detention, has stated that the petitioner has made it a practice to attack persons and terrorise the businessmen and the people in presence of others with a view to creating a sense of fear psychosis among the people, so that they could comply with the petitioner's demand. The District Magistrate has finally stated that, inspite of the petitioner being arrested and forwarded to custody in several cases, his anti-social activities continued unabated and each time he was released on bail and committed further offences and is creating a havoc in the

area disturbing and jeopardising peace and order in the locality.

At the end of the grounds of detention, the District Magistrate has given the following reason as to why he was of the view that detention of the petitioner was necessary, inspite of the fact that he was in jail custody after being arrested on 2.8.2001.

"You are at present in the jail custody after being arrested on 2.8.2001 and there is every likelihood that you may get bail and once enlarged on bail, you would again indulge in further antisocial activities prejudicial to maintenance of public order. So with a view to preventing you 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 National Security Act, 1980 was passed against you."

3. Mr. Debasis Panda, learned counsel for the petitioner, submits that, although the District Magistrate has indicated in the aforesaid grounds of detention that there is every likelihood that he may get bail, there was no material whatsoever for the aforesaid conclusion arrived at by the District Magistrate that, "there is every likelihood that he may get bail," inasmuch as, no bail application had been filed by the petitioner or on behalf of the petitioner after his arrest on 1.8.2001. According to Mr. Panda, the conclusion of the District Magistrate that the petitioner is likely to be released on bail is not based on any material and is merely the ipse dixit of the District Magistrate and that, on this ground alone the order of detention is liable to be quashed. He cited a decision of the Supreme Court in the case of *Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others*, in support of his contention that in the absence of any material in support of the conclusion of the detaining authority that the detinue is likely to be released on bail, the order of detention is liable to be quashed.

Mr. K.C. Kar, learned Additional Standing Counsel, on the other hand, cited the decision of the Supreme Court in the case of *Kamarunnissa and Others Vs. Union of India* and another, and a decision of the Division Bench of this Court in the case of *Tilatama Parida v. State of Orissa* 85 (1998) CLT 48, and submits that in the present case the District Magistrate has given instances where the petitioner was arrested earlier several times due to his anti-social activities and yet has come out of the jail, either on being acquitted or being released on bail. According to Mr. Kar, there was sufficient material before District Magistrate for coming to the conclusion that "there is every likelihood that the petitioner may get bail" and if enlarged on bail, he would again indulge in further anti-social activities prejudicial to the maintenance of public order.

4. In the case of *Kamarunnissa* (supra) cited by Mr. Kar, the Supreme Court has held that, the detention order can be held to be validly passed even in the case of a person in custody (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability

indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a Higher Court.

In Tilatama's case (supra), the Division Bench of this Court found in the order of detention that, the detaining authority had taken a view that the detenus might be released on bail and indulge in further anti-social activities prejudicial to the maintenance of public order and tranquillity. But in the said case of Tilatama, no contention was raised on behalf of the detenue that there was no material for the conclusion of the detaining authority in the order of detention that "the detenue might be released on bail".

5. In the present case, on the other hand, a specific contention is raised by Mr. Panda, learned counsel for the petitioner, that there is no material whatsoever in support of the conclusion of the detaining authority in the order of detention as well as the grounds of detention "there is every likelihood that the petitioner may get bail."

In Amritlal's case (supra), the Supreme Court had the occasion to deal with a similar contention as is raised by Mr. Panda, and the Supreme Court held in paragraph 4 that there must be cogent materials before the officer passing the detention order that the detenue would likely to be released on bail, The relevant portion of the said judgment of the Supreme Court in Amritlal's case is quoted herein below :

"In Agustin's decision Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi "this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenue is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention."

It will be clear from the judgment of the Supreme Court in the case of Amritlal that, there must be cogent materials before the officer passing the detention order that the detenue is likely to be released on bail and the inference must be drawn from the materials on record and must not be the ipse dixit of the officer passing the order.

6. Bearing in mind the aforesaid law laid down by the apex Court in Amritlal's case, we now examine the conclusion of the District Magistrate in the impugned order and the grounds of detention "that there is every likelihood that the petitioner may get bail" for the purpose of finding out as to whether there were

any materials in support of this conclusion. There is no mention whatsoever either in the order of detention or the grounds of detention that a bail application had been made for release of the petitioner after he was arrested on 1.8.2001. Amongst the enclosures annexed to the grounds of detention, there is no copy of bail application or any other material to indicate that bail application had been filed by the petitioner or on behalf of the petitioner to release him on bail after his arrest on 1.8.2001. In the absence of any cogent material in support of the conclusion of the detaining authority, either in the order of detention or in the grounds of detention, that the petitioner though arrested on 1.8.2001 is likely to be released on bail, we are of the view that the order of detention passed by the District Magistrate is liable to be quashed.

7. For the aforesaid reasons, we quash the order of detention dated the 10th August, 2001 passed by the District Magistrate, Cuttack under Annexure-1 and direct that the petitioner-detenu will be forthwith released from custody, if not wanted in connection with any other case.

The writ petition is allowed. No cost.

Pradip Mohanty, J.

11. I agree.