

(2006) 07 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 16138 of 2005

Sudarsan Parida ' Suduru

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

Arms Act, 1959 — Section 25, 25A(1B), 27
Constitution of India, 1950 — Article 226
Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 3(2)
Penal Code, 1860 (IPC) — Section 294, 302, 307, 332, 34

Citation : (2006) 2 OLR 292

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

Bench : Division Bench

Advocate : R.N. Mohanty, for the Appellant; A.G.A. for opp. Party Nos. 1 to 3 and B. Dash, A.S.C. (Central), for the Respondent

Final Decision : Allowed

Judgement

S. Barman Roy, C.J.—This is an application under Article 226 of the Constitution of India challenging the order of detention dated 30.10.2005 issued by the District Magistrate, Ganjam, Chatrapur in respect of the petitioner under Sub-section (2) of Section 3 of the National Security Act, 1980 (hereinafter referred to as "the said Act") authorizing detention of the petitioner in the Central Jail, Berhampur so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The impugned order of detention dated 30.10.2005 reads as under:

OFFICE OF THE DISTRICT MAGISTRATE, GANJAM, CHATRAPUR.

N.S.A. No. 7/2005.

ORDER

No.993/Res. Dt. 30.10.2005

Whereas I, Shri Sanjay Kumar Singh, IAS, District Magistrate, Ganjam have been directed in Government of Orissa, Home Department Order NO.8754/C Dt. 14.09.2005 to exercise the power conferred by Sub-section (2) of Section 3 of the National Security Act, 1980.

Whereas I am satisfied that with a view to preventing Suduru " Sudarsan Parida aged about 33 years S/O. Raghab Parida of Village Pakalapalli, PS-Aska, 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 hereby direct that the said Suduru " Sudarsan Parida, who is now in intermediate judicial custody in Circle Jail, Berhampur WdeAska PS case No.125 dt. 23.07.2004 Under Sections 341/307/34 IPC/25-A(1-B) Arms Act turned to 302 IPC be detained in the Circle Jail, Berhampur until further orders.

District Magistrate, Ganjam, Chatrapur.

3. It appears that when the petitioner was in custody in connection with Aska P.S. Case No. 125 dated 23.7.2004 Under Sections 341/307/34 IPC and Section 25-A (1-B) of the Arms Act to which Section 302 IPC was subsequently added, the order of detention dated 30.10.2005 was served upon the petitioner. Subsequent thereto by letter dated 31.10.2005 issued by the said District Magistrate the grounds of detention were furnished to the petitioner under Annexure-4.

4. Learned Counsel for the petitioner has taken us through the grounds of detention under Annexure-4 to the petition. It appears that series of police cases have been referred to in the grounds of detention in which the detenu-petitioner was allegedly involved. Some of those cases undoubtedly involve serious offences. In particular, learned Counsel for petitioner drew our specific attention to ground Nos.1 and 2 of the statement of, grounds of detention furnished to the petitioner. Ground Nos.1 and 2 read as under:

(1) Bhanjagar PS Case No. 159 dt. 25.09.1998 u/s 457/392 IPC/25 & 27 Arms Act:

On 25.09.1998 at 11.30 PM, complainant Nilamani Khatei working in PVN Rao Petrol Pump, Bhanjanagar presented a written report alleging to the effect that some unknown persons committed robbery in respect of cash of Rs. 4,840/- from the petrol pump. Basing on this report, Bhanjanagar PS Case No. 159 dated 25.09.1998 u/s 457/392 IPC/25 & 27 Arms Act was registered and investigated into (Annexure-III). During course of investigation, the I.O. recorded the statement of witnesses Simanchal Patra and Prasanna Kumar Biswal u/s 161 Cr.P.C. (Annexure-IV). During course of investigation, steps were taken to arrest you but in vain. On completion of investigation, charge sheet was placed against

you and 4 others declaring you as absconder vide CS1 No. 17dt. 12.02.1999 u/s 457/395 IPC (Annexure-V). You surrendered in the Court later on. The case is now sub-judice.

(2) Aska PS Case No. 60 dt. 06.05.1999 u/s 452/294/332/307/379/34 IPC/ 7 Cr LA Act:

On 06.05.1999 at 10.50 PM complainant C/597 Mahantara Sahu of Aska TOP presented a written report to the effect that on 06.05.1999 at about 10.30 PM, you along with Narayana Pradhan entered to Aska TOP and attempted to kill the complainant and others. Basing on the report of C/597 Mahantara Sahu, Aska PS case No. 60 dtd. 06.05.1999 u/s 452/294/332/307/379/34 IPC/7 Cr. L.A. Act was registered and investigated into (Annexure-VI), During course of investigation, the I.O. recorded the statement of Mahantara Sahu, Mayadhara Palai, Krushna Chandra Mohanty u/s 161 Cr.P.C. (Annexure-VII-A, B & C), during course of investigation the I.O. arrested you and forwarded in custody. On completion of investigation, charge sheet was placed against you and Narayana Pradhan u/s 452/294/332/307/379/34 IPC/ 7 Cr. L.A. Act. (annex-VIII). The case is sub-judice in the Court.

5. Learned Counsel for the petitioner submits that on an earlier occasion by order dated 29.9.1999 issued by the District Magistrate, Ganjam under the same provision of the said Act the petitioner was detained. Annexure-10 dated 30.9.1999 is the statement of grounds for detention that was served upon the petitioner. From paragraphs 6 and 8 of the said statement of grounds served upon the petitioner in connection with the previous detention under the provisions of the said Act on 30.9.1999 it reveals that same grounds of detention as quoted above were relied upon by the detaining authority for detention of the petitioner. For the sake of brevity and to avoid prolixity, we are not repeating the same grounds here again. A bare perusal of the statement of grounds reveals that ground Nos. 6 and 8 taken in the statement of grounds of detention dated 30.9.1999 are identically same to ground Nos. 1 and 2 of the statement of grounds of detention dated 31.10.2005.

6. Relying upon the aforesaid facts and circumstances, it has been pleaded by the petitioner in this petition as well as in the rejoinder that same grounds were relied upon by the detaining authority to detain the detenu-petitioner under both the orders of detention, one being in 1999 and other being in 2005.

7. Learned Counsel for the petitioner relied upon a decision of this Court in Udayanath alias Aswini Kumar Sethi Vs. State of Orissa and Others, In the said decision the grounds of detention being common in two detention orders, the later detention order was quashed by this Court. The aforesaid decision of this Court was rendered in conformity with the decisions of the Supreme Court in Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, , Ramesh Vs. State of Gujarat and Others, and Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another, . It seems to us that if the aforesaid two

grounds were not taken into consideration by the detaining authority for detention of the detenu-petitioner in the impugned order of detention, the decision of the detaining authority might have been quite different.

8. Of course learned Additional Government Advocate submitted that the previous detention order in respect of the petitioner was quashed by this Court on the ground of delay of about 16 days in referring the matter to the State Government. But on perusal of aforesaid decisions of the Supreme Court, we find that if some of the grounds of detention were same in the earlier grounds of detention in respect of the petitioner, that was sufficient to quash the subsequent order of detention. That being the position, we cannot come to a different conclusion than that has been arrived at by the Apex Court.

9. In the result, we are constrained to allow the petition, quash the order of detention dated 30.10.2005 under Annexure-7 and its confirmation by order of the Government dated 7.11.2005 under Annexure-2 and direct that the petitioner be set at liberty forthwith, if his detention is not required in connection with any other case.