

(2002) 06 OHC CK 0051

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5150 of 20

Susanta Bisoi alias Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Arms Act, 1959 — Section 27
National Security Act, 1980 — Section 3(2), 8
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Citation : (2002) 06 OHC CK 0051

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D. Sarangi, for the Appellant; S.K. Dash, Additional Government Advocate for O.Ps. Nos. 1 and 2 and Siva Mohanty, A.S.C. (Central) for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The Petitioner has been detained in Circle Jail Berhampur by the District Magistrate, Ganjam in exercise of his powers under Sub-section (2) of Section 3 of the National Security Act, 1980 (in short, "the Act") by order dated 10.1.2002 (Annexure-1). He was served with the grounds of detention by a communication dated 10.1.2002 (Annexure-2) from the Collector and District Magistrate, Ganjam Chatrapur. Aggrieved, the Petitioner has filed this Habeas Corpus petition for quashing the said order of detention.

2. Mr. D. Sarangi learned Counsel for the Petitioner submitted that when me impugned order of detention was passed, the Petitioner was in custody having been arrested on 3.12.2001 in connection, with B.N. Pur P.S. Case No. 314 dated 1.12.2001 under Sections 147/148/307/149, IPC/27 of the Arms Act, and hence, there is absolutely no need for the District Magistrate, to pass the detention order for preventing him from resorting to the alleged prejudicial activities. He further argued, that neither the order of detention nor the grounds of detention

indicate that the District Magistrate satisfied that the Petitioner was likely to be released on bail and if so released, he would resort to the prejudicial activities. He argued that all that was mentioned in the grounds of detention is that the Petitioner is contacting advocates for bail through his associates. According to Mr. Sarangi the fact that the Petitioner was contacting advocates for bail through his associates does not amount to the likelihood of the Petitioner being released on bail. He cited the decision of the Supreme Court in *Amritlal and Ors. v. Union Government through Secretary Ministry of Finance and Ors.* 4 (2000) CCR 279 (SC) wherein the mention of the expression, "likelihood of his moving application for bail" was held not to be same as "likelihood to be released on bail."

3. Mr. S.K. Dashy learned Additional Government Advocate on the other hand vehemently, argued that the-facts narrated in the grounds of detention by , the District-Magistrate would show that the Petitioner was a dangerous anti-special;- person and had to be detained in custody for preventing him from committing; acts prejudicial to the maintenance, of order. He further argued that this is not a fit case in which the High Court should interfere with the order of detention on the ground that the District Magistrate has not applied his mind before passing the order of detention.

Miss. Siva Mohanty, learned Addl. Standing Counsel (Central) prays for some time to file counter affidavit. But since the" contentions raised in this case do not concern the Union of India, we are not inclined to adjourn the case on the prayer made on behalf of the Union of India, particularly, when this; is a Habeas Corpus case

4. In the grounds of detention, the District Magistrate has narrated various incidents in which the Petitioner is alleged to be involved and has taken note of the fact that he was arrested on 3.12.2001 in connection with B.N. Pur P.S. Case No. 314 dated 1.12.2001 under Sections 147/148/307/149, I.P.C/27 of the Arms Act and was in jail custody. In the grounds of detention, however, the District Magistrate has indicated, his reasons as to why it was necessary to pass the order of detention, under the Act although the Petitioner was in jail custody. The relevant portion from the grounds of detention which contain the reasons of the District Magistrate is quoted herein below

Your criminal back ground and the recent involvement while you were openly, terrorizing the general members of public have created large-: scale apprehension in-the minds of the common public, In the past you have been-prosecuted several times by the law of the land but the same has not deterred you from indulging in acts of terrorizing, collecting "Dada "Mamuli" and such activities; You were arrested on 3.12.2001 and forwarded to the Court of SDJM, Berhampur on 4.12.2001, in B.N. Pur. Case No. 314 dt 1.2.2001 u/s 147/148/307/149, IPC/27 Arms Act and now in jail custody and contacting Advocates for bail through hrs associates.

It is necessary to prevent you for getting released on bail for acting in a manner

prejudicial to the public order by suitable order of detention. You are extremely violent, person and desperate antisocial as you move with deadly weapons and bombs. You are posing yourself threat to the public order in municipal limits of Berhampur. Which will lead to injuries and loss of human lives and properties and the law of land will be jeopardized. Thus, in view of your antisocial and criminal activities and your habitual tendencies, which are proximate at the point of time, your detention is essential in order to maintain the tempo, of normal life and public order. Hence the detention orders. The proposal of S.P. Berhampur is enclosed as Annexure-XXVI.

You are hereby informed that you are at liberty to represent your case to the State Government/Central Government/Advisory Board duly constituted by the State Government u/s 8 of the National Security Act. 1980 and also to claim personal appearance before the-said board

It will, thus, be clear that the District Magistrate was aware that the Petitioner was in jail custody having been arrested on 3.12.2001 in connection B.N. Pur P.S. Case No. 314 dated 1.12.2001 under Sections 147/148/307/149, IPC/27 of the Arms Act. In the said grounds of detention, however, the District Magistrate has stated that the Petitioner was contacting advocates for bail through his associates and it was necessary to prevent him for getting released on bail for acting in a manner prejudicial to public order by suitable order of detention.

5. We are afraid mere mention in the grounds of detention that the Petitioner was contacting advocates for bail through his associates is not enough for passing an order of detention in respect of a detainee who is already in custody, In the case of *Amritlal and Ors. v. Union Government through Secretary, Ministry of Finance and Ors.* (supra) cited by Mr. Sarangi, the Supreme Court took into consideration its clear decision on the point and held:

6. The requirement as noticed above in Binod Singh's case (supra) that there is likelihood of the Petitioners being released on bail" that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the "likelihood of his moving an application for bail", which is different from "likelihood to be released on bail". This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis, however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the Petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

It will, thus, be clear from the aforesaid decision of the Supreme Court that before passing the detention order, the District Magistrate must satisfy himself of the likelihood of the Petitioner being released on bail and that satisfaction ought to be reached on cogent material. In this case, there is no satisfaction recorded by the District Magistrate that there is likelihood of the Petitioner being released

on bail. The only material that is available with the District Magistrate is that the Petitioner was contacting advocates for bail through his associates. After contacting the advocates for bail, the bail application may or may not be moved. That apart, mere filing of the bail application does not amount to the likelihood of the Petitioner being released on bail. The Petitioner was arrested on 3.12.2001 and the offences alleged against the Petitioner include the offence u/s 307, I.P.C. and the Court may or may not grant bail immediately after arrest of the Petitioner depending upon the materials against the Petitioner. We are, thus, of the view that the impugned order of detention is liable to be quashed only on the ground that it does not disclose satisfaction of the District Magistrate of the likelihood of the Petitioner being released on bail.

6. In the result, the writ petition is allowed, the impugned order dated 10.1.2002 passed by the District Magistrate, Ganjam (Annexure-1) is quashed and the Petitioner - Susanta Bisoi alias Naik be released forthwith unless he is wanted in connection with some other cases.

M. Papanna, J.

7. I agree.