

(2004) 03 OHC CK 0032

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 169 of 2003

Udayanath alias Aswini Kumar Sethi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
National Security Act, 1980 — Section 3(2)

Citation : (2004) 28 OCR 159 : (2004) 1 OLR 465

Hon'ble Judges : Sujit Barman Roy, C.J.; A.S. Naidu, J

Bench : Division Bench

Advocate : Rabindranath Mohanty, R.C. Ojha, A.K. Jena, B.B. Mohanty and R. Mohalik, for the Appellant; A.G.A. For opp. party Nos. 1 and 2 and A. Deo, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sujit Barman Roy, C.J.—By this Habeas corpus petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing the order dated 6th August, 2003 issued by the District Magistrate, Cuttack under Subsection (2) of Section 3 of the National Security Act, 1980 in respect of his son Sri Titua " Anirudha Sethi with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. In exercise of the power conferred upon him u/s 3 of the National Security Act, 1980, the District Magistrate, Cuttack issued an order of detention in respect of the detenu, being the son of the petitioner, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The impugned order at Annexure-1 to the petition reads as under :-

"Whereas, I Shri Deoranjana Kumar Singh, I.A.S., District Magistrate, Cuttack, have been empowered in Government of Orissa, Home Department Order No. 2926/C dated 16.6.2003 to exercise the powers conferred by Sub-section (2) of Section-3 of the National Security Act, 1980. And whereas, I am aware that Shri

Titua alias Anirudha Sethi, aged about 23 years, son of Udayanath alias Aswini Kumar Sethi of Chauliaganj Talasahi, P.S. Chauliaganj in the district of Cuttack is presently lodged in the Circle Jail, Cuttack at Choudwar in connection with Chauliaganj P.S. Cases No. 75 dated 26.5.2003, No. 76 dated 26.5.2003, No. 110 dated 20.7.2003 and No. 112 dated 22.7.2003. He had filed bail petitions in the Court of the S.D.J.M., Sadar, Cuttack in Chauliaganj P.S. Cases No. 76/2003, No. 110/2003 and No. 112/2003. The bail petitions in Chauliaganj P.S. Cases No. 76/2003 and 112/2003 was allowed by the Court of the S.D.J.M., Cuttack on 24.7.2003 and 30.7.2003 respectively. In Chauliaganj P.S. Case No. 75/2003, the Hon"ble High Court of Orissa BLAPL No. 4406/2003 has allowed anticipatory bail to him. The bail petition in Chauliaganj P.S. Case No. 110/2003 in the Court of the S.D.J.M., Sadar, Cuttack heard on 4.8.2003 and the case fixed to 8.8.2003 for consideration of the bail petition. There is every likelihood that he may be released on bail. Once enlarged on bail, there is every likelihood of him indulging in activities prejudicial to the maintenance of public order.

And whereas, I am a subjectively satisfied, after due applicatin of mind on the materials placed before me, that with a view to preventing Shri Titua alias Anirudha Sethi, son of Udayanath alias Aswini Kumar Sethi of Chauliaganj Talasahi, P.S. Chauliaganj in the district of Cuttack from acting in manner prejudicial to the maintenance of public order, it is necessary to make the following orders.

Now therefore, in exercise of the powers conferred upon me by Sub-section (2) of Section 3 of the National Security Act, 1980, I do hereby direct that the said Shri Titua alias Anirudha Sethi, son of Udayanath alias Aswini Kumar Sethi of Chauliaganj Talasahi, P.S. Chauliaganj in the district of Cuttack be detained in the Circle Jail, Choudwar until further orders."

3. The petitioner pleaded in his petition that while the detenu was in judicial custody in connection with some police cases, order of detention along with grounds of detention was served upon the detenu on 13.8.2003. It has been alleged in the grounds of detention that the detenu has been persistently indulging in antisocial activities prejudicial to the maintenance of public order not only in the area under Chauliaganj Police Station but also in the areas under Madhupatna Police Station and that the detenu did not have any ostensible means of livelihood and earns the same by collecting money forcibly locally called "Dada Bati" from the local shop-keepers, business men, bus conductors and local contractors. His antisocial activities gained momentum day by day and the people of the locality were morally scared for his antisocial activities. It has also been alleged in the said grounds of detention that mere appearance of the detenu in the locality used to create a panic in the minds of peace loving citizens and for this reason, the public did not have courage to report against the detenu before any authority though they were seriously affected by the atrocious activities of the detenu. It was also claimed in the said grounds of detention that the report of the Superintendent of Police, Cuttack revealed that high handed

criminal activities of the detenu affected the public order in the area. It is further stated therein that on 22.7.2003 at about 6.00 P.M., the detenu along with his associates came from Chunabhati side riding on a black bullet motor cycle bearing No. APV-3833 in high speed in a rash and negligent manner and dashed against a small school boy at Gate No. 1 of O.S.A.P. and for this reason the boy fell down with his cycle. Seeing this incident, the local people as well as constable Govinda Chandra Sahoo (C/904) of Chauliaganj Police Station, who was on duty at O.M.P. Chhak, rushed to the spot. Seeing police, the detenu and his associates got annoyed and threatened the constable with dire consequences and gave him a push at his neck. He also abused him in filthy language. As a result, the police constable was terrorized. The detenu also terrorized the local shop-keepers and public in general by showing revolver and threatened that shop keepers and vehicle owners must pay him money locally called "Dada Bati". He further cited example of murder of one Gopal. Due to such antisocial activities in a busy crowd area at O.M.P. Square, the shop-keepers closed down their shops out of fear and general people ran away helter and skelter to save their lives. The vehicular movement came to a stand still. The pedestrians fled away from the said area apprehending danger to their lives and properties. A scene of terror prevailed in the entire area. For these reasons, the public order of the locality was seriously jeopardized. After the incident was over, the detenu and his associates fled away from the spot towards Chauliaganj in high speed while threatening dire consequences to the said constable Govinda Chandra Sahoo and the local shop-keepers. In this connection, Chauliaganj P.S. Case No. 112 dated 22.7.2003 under Sections 279/294/506/353/34 I.P.C. and 25 of the Arms Act was registered and was till then under investigation. Again on 25.5.2003, at about 11.15 P.M., the detenu and his associates chased Sangram Keshori Jena of 6th Bn. O.S.A.P. Quarter No. 11 and others, near Dandasahi Chhak while they were returning from a telephone booth situated near that place. The detenu and his associates detained, assaulted and terrorized them with lathi and revolver. When said Sangram Keshori Jena protested against such behavior of the detenu, the detenu hit the said Jena on his head by the revolver inflicting severe injuries on his head. In this connection, Chauliaganj P.S. Case No. 75 dated 26.5.2003 under Sections 341/294/323/325/506/34 I.P.C. and Section 27 of the Arms Act was registered.

4. Again on the very next day (26.5.2003) at about 7.30 P.M., the detenu and his associates charged bombs at Grand Coach Bus bearing Registration No. W.B-19A-3751 while the conductor of the said bus was issuing tickets to the passengers at O.M.P. Crossing. As a result, the roof top of the bus was damaged. The people of the locality were terrorized. The shopkeepers closed down their shops and a feeling of terror prevailed in the area and in this connection, Chauliaganj P.S. Case No. 76 dated 26.5.2003 under Sections 286 I.P.C. and Section 9(b) of the Indian Explosives Act was registered. The case was till then under investigation.

5. Some days thereafter, on 20.7.2003 at about 10.30 P.M. again the detenu and

his associates came to the fruit shop of Tukuna " Sumanta Pradhan at O.M.P. Crossing and demanded money "Dada Bati" and also abused the said Tukuna in obscene language and threatened him with dire consequences and also assaulted him with a knife inflicting injury on the head. In this connection Chauliaganj P.S. Case No. 110 dated 20.7.2003 under Sections 294/324/506/384/34 I.P.C. was registered. The case was till then under investigation. Apart from the aforesaid cases, it is further claimed in the said grounds of detention that the detenu was involved in following other cases as reported by the Superintendent of Police, Cuttack.

(i) Chauliaganj P.S. Case No. 11 dated 24.1.2000 under Sections 452/380/307/34/ I.P.C. and Section 25 of Arms Act.

(ii) Madhupatna P.S. Case No. 124 dated 19.4.2001 under Sections 448/294/506 I.P.C. and Section 27 of Arms Act.

(iii) Chauliaganj P.S. Case No. 172 dated 16.11.2001 u/s 394 I.P.C.

(iv) Chauliaganj P.S. Case No. 43 dated 15.3.2002 u/s 302 I.P.C. and Sections 25 and 27 of Arms Act.

(v) Chauliaganj P.S. Case Non-F.I.R. No. 188 dated 23.7.2003 u/s 110 Cr.P.C.

6. Relying upon the aforesaid grounds and facts and figures, it was further concluded in the said grounds of detention that the detenu was persistently indulging in antisocial activities jeopardizing the public order and tranquillity and thereby created panic among the peace loving people of the area. It was also noted in the said grounds of detention that such antisocial activities of the detenu continued unabated in spite of being arrested and charge sheeted in a number of cases and booked under National Security Act, 1980 earlier. The detenu did not spare even prime business centre and important public places like O.M.P. Square of Cuttack Town. It is also alleged that detenu did not hesitate to attack the police personnel on duty in order to create fear psychosis among the general public. It is claimed that detenu attempted to scuttle the criminal justice system by terrorizing and intimidating witnesses and informants of the cases instituted against him. At the time the said order of detention and the grounds of detention were served upon the detenu he was under judicial custody in connection with Chauliaganj P.S. case No. 75/2003, 76/2003, 10/2003 and 112/2003 and his bail petitions in connection with aforesaid Police Station case No. 76/203 and 112/2003 were allowed by the S.D.J.M., Cuttack. Prayer of the detenu for anticipatory bail in connection with aforesaid P.S. Case No. 75/2003 was allowed by this Court vide BLAPL No. 4406/2003. Further bail petition of the detenu in aforesaid P.S. Case No. 110/2003 was pending for consideration the Court of S.D.J.M., Sadar, Cuttack. It was apprehended in the said grounds of detention that there was every likelihood that the detenu may 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 prevent him from acting in any manner, prejudicial to the maintenance of public order, the

aforesaid order of detention under Sub-section (2) of Section 3 of the Act was issued against him. The grounds of detention contains further recital that one set of copies of relevant supporting documents were enclosed as per list. Accordingly, the detenu was informed that it was open to him to make representation against his order of detention to the State Government, Central Government as well as Advisory Board constituted under the provisions of the said Act. Accordingly, the detenu by his letter dated 26.8.2003 made a representation before the District Magistrate, Cuttack, the Advisory Board constituted under the said Act as well as the Government of Orissa including the Chief Minister. As some of the documents said to have been illegible or translated copies thereof were not furnished to the detenu, he made a grievance in his aforesaid representation that legible copies of the documents and Oriya translations thereof be made available to him. According to the respondents on 2.9.2003 the detenu was furnished with various copies including Oriya translations of some of those documents. It needs to be mentioned in this connection that the Government of Orissa by order dated 14.8.2003 approved the detention order passed by the District Magistrate against the detenu. By letter dated 5.9.2003, the Government of Orissa informed the detenu that he Government duly considered his aforesaid representation and was pleased to reject the same. By another order dated 23.9.2003 Government of Orissa informed the detenu that the case was referred to the Advisory Board u/s 10 of the said Act and the said Board was of the view that there was sufficient cause for detention for the detenu and accordingly, Government of Orissa confirmed the order of detention passed against the detenu.

7. We have heard learned counsel for both sides at length. Learned counsel for the petitioner agitated many grounds before us for quashing the order of detention passed against the detenu. We consider it necessary to mention it here that this petition has to be allowed on one such ground and therefore, we are not expressing any opinion on the other grounds agitated before us by the learned counsel for the petitioner.

8. While referring to the ground No. 7 taken in the grounds of detention, learned counsel for the petitioner contended that the detaining authority while passing the impugned order of detention took into consideration certain police cases, namely. Chauliaganj Police Station case No. 11/2002, 172/2001 and 43/2002. On an earlier occasion, another such detention order dated 3.5.2002 was issued by the same District Magistrate, Cuttack against the detenu and while passing such previous detention order, aforesaid police cases were taken as a ground for detention. This Court in OJC No. 6586 of 2002, quashed the said order of detention dated 3.5.2002. In the present case, all those police cases apart from some other subsequent police cases registered against the detenu were taken into consideration while passing the impugned order of detention. It appears from the counter affidavit filed on behalf of the District Magistrate in paragraph 18 thereof that the District Magistrate admitted this position and it was further stated therein that the aforesaid three police cases were taken into consideration

to show the past criminal and antisocial records of the detenu. Referring to these facts, as stated in the grounds of detention and as admitted by the Detaining Authority in his affidavit in paragraph 18 thereof, learned counsel for the petitioner contended that the present impugned order of detention must be quashed inasmuch as those cases could not have been the basis for issuing the present detention order under challenge in this petition.

9. It is the settled position of law that in a catena of decisions, the Apex Court held that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule it nullifies the entire order. In *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, while considering the similar cases of detention under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985, the Supreme Court held the aforesaid view. It has been held by the Supreme Court in paragraph 15 of the aforesaid decision that where the detaining authority while passing second order of detention had referred to the earlier detention order and the judgment of the High Court quashing it, presumably for the purpose of showing that the detenu in spite of earlier detention order was continuing his bootlegging activities and the detaining authority said clearly in affidavit in reply that he took into consideration the previous grounds of detention also for his conclusion that the detenu was engaged in bootlegging activities since long, thus, in other words, the detaining authority had taken into consideration the earlier grounds of detention which grounds had been nullified by the High Court, the subsequent detention order was vitiated on the ground that the detaining authority had taken into consideration the grounds of earlier detention order along with other materials. On facts case before us is exactly identical to the facts of the aforesaid case decided by the Apex Court.

10. Same view was reiterated by the Apex Court in *Ramesh Vs. State of Gujarat and Others*, .

11. Again in *Jahangirkhan Fazalkhan Pathan Vs. Police Commissioner, Ahmedabad and Another*, while dealing with a similar case under the Provisions of Gujarat Prevention of Anti-Social Activities Act, 1985, with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order, it was held that u/s 15 of the said Act, modification and revocation of the detention order by the State Government shall not bar making of another detention order on fresh facts when the period of detention has come to an end either by revocation or by expiry of the period of detention. However, an order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the Court, and if such previous grounds of

detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order the order of detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered. In that case, in the grounds of detention specific reference had been made to the earlier two orders of detention against the detenu. In the schedule of documents annexed to the grounds of detention not only the copies of the order of detention but also of the grounds of detention in the earlier detention cases had been given to the petitioner. Thus the detaining authority while considering the fresh facts disclosed in the grounds had taken into consideration the previous grounds of detention as well as the orders made therein even though the same were nullified by the High Court as well as by the Advisory Board, for the purpose of showing that the detenu in spite of those earlier orders of detention was continuing in his bootlegging activities. In this respect, it therefore appears to us that facts of the aforesaid case as decided by the Apex Court are similar to the facts of the present case now we are dealing with. Therefore, our conclusion cannot be different. We are bound to follow the same principle as enunciated by the Supreme Court in the aforesaid case.

12. In view of the aforesaid authoritative pronouncements made by the Apex Court, we are left with no option but to follow the same principle in this case also.

13. We have quoted the impugned order of detention in this judgment herein above. We have also given the gist of the grounds of detention of the detenu. Apart from the aforesaid, we have also referred to the admissions made by the detaining authority in his counter affidavit in this regard. From the aforesaid, it appears that the grounds that were acted upon for issuing previous order of detention were also relied upon in the grounds of detention by the detaining authority in support of the impugned order of detention. Though in the grounds of detention, some fresh facts have been taken as the grounds, but detaining authority also relied upon the same grounds of previous detention order apart from fresh facts. As a result and in view of aforesaid binding decisions of the Apex Court, we are bound to hold that the impugned order of detention cannot be sustained and the writ as prayed for, must be issued.

14. Accordingly, we allow this petition, quash the impugned order of detention issued against the detenu and direct that the detenu be at liberty forthwith, if not required in connection with any other case.

A.S. Naidu, J.

I agree.