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Ashok Das Vs. Additional District Magistrate and ors.

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Court : Orissa

Decided On : Nov-02-1974

Reported in : AIR1975Ori170

Judge : R.N. Misra and ;K.B. Panda, JJ.

Acts : Maintenance of Internal Security Act, 1971 - Sections 3

Appeal No. : O.J.C. No. 1125 of 1974

Appellant : Ashok Das

Respondent : Additional District Magistrate and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : B.M. Patnaik, Adv.

Disposition : Writ allowed

Judgement :

R.N. Misra, J.

1. This is an application for a writ of habeas corpus directed against the order of detention of the petitioner passed by opposite party No. 1 on 16-10-1974 in exercise of powers conferred under Section 3 (1) (a) (ii) of the Maintenance of Internal Security Act, 1971 (hereinafter referred to as the Act) read with Section 3

(2) (b) and Section 5 thereof.

2. The petitioner is a sitting member of the Orissa State Legislative Assembly and represents the Korai Constituency within the district of Cuttack. In support of the order of detention, the following grounds were provided to him :--

'A. You have committed the following successive atrocious acts which have had seriously disturbing impact on the local community by terrorising the latter and disturbing the even tempo of the life of the local community in Jajpur Town and several other areas of Jajpur Subdivision.

(a) On 23-2-1974 night at about 0.30 A. M. you along with Rabindranarayan Singh, Hiranya Kishore Kanungo, Kamalakanta Biswal and others entered into the Congress Election office at Jaipur Road and assaulted the inmates present and you physically lifted one Suresh Chandra Naik and carried him away in your Jeep. In this connection, Korai P. S. Case No. 17/74 Section 143/448/323/342, I. P. C. has been started and is under investigation.

(b) On 1-8-1974 evening in a public meeting at Sujanpur Bus Stand under Jajpur P. S. you made public utterences hurling threats at one Dwarikanath Singh alias Lala to quit Sujanpur within two months failing which you would attack him in order to force him to quit that place. You also instigated the local people present in the meeting to lend their support to you to carry out the above mentioned illegal acts.

(c) On 16-9-1974 one Rangadhar Naik of Barchana P. S. area while present in a Tea Stall at Jajpur Town was physically lifted by your followers Sarat Naik and others and was produced before you. As per your further direction, he was assaulted and numerous burning injuries were caused on his person by means of burning cigarettes. In this connection Jajpur P. S. Case No. 176/74 under Sections 342/324/323/379/34. I. P. C. is under investigation.

(d) On 9-10-1974 night under your direction, your followers Babana Nana and others physically lifted one Sarat Kumar Das of Jajpur town and produced him before you in the shop of Siba Das of Jajpur town where you assaulted the said Sarat Kumar Das whereafter you took Sarat Kumar Das to your house at

Bahabalpur by force where you falsely charged Sarat Kumar Das to have incurred a loan of Rs. 3,000/- from your father and threatened him to repay the said amount. In this connection Jaipur P. S. Case No. 189/74 under Sections 147/342/323, I. P. C. is under investigation.

B. You have incited members of the public at Sukinda by inflammatory speech urging the people to resort to violence and bloodshed and to paralyse the Government machinery so that the people's demand for adequate supply of essential foodgrains can be fulfilled, as would be abvious from the following details :--

On 6-10-1974, in a public meeting of Sukinda Dolamandap, you instigated the people to resort to violence by means of lathi for fulfilment of their demands and told them that if the B. D. O. would be killed, rice would be available on the next day. You categorically incited the people to kill the B- D. O. and told them that the police will not be able to do anything except arresting and releasing them on bail, You further asked the people to break the hands of the Food Minister. You also took pride that you gave a punch to the Governor on the floor of the assembly. You incited the people to see that things are on fire on 17-10-1974 and that the Government machinery is paralysed. You told the people that you did not believe in non-violence and only relished violence and bloodshed. According to you, non-violence came only after violence and that demands can be fulfilled only by resorting to violence and by making use of lathi. You issued a leaflet with heading 'A Sangram Kahinki' wherein you appealed to the public that it would be better to die with Government's bullets rather than by starvation.

Your above acts and public utterances have been seriously affecting the maintenance of public order and hence the imperative and immediate need of invoking the provisions contained in Section 3 (1) (a) (ii) of the Maintenance of Internal Security Act, 1971 (Act 26 of 1971).

In consideration of the above, I am personally satisfied that with a view to prevent you from acting in a manner prejudicial to the maintenance of public order, it is necessary to do so and I have, therefore, passed an order under Section 3 (1) (a) (ii) read with Sub-section (2) (b) of S. 3 of the Maintenance of Internal Security Act,

1971 (Act 26 of 1971).'

3. The detenu has alleged in his application that he belongs to the Bhartiya Lok Dal and on account of his political activities, the Chief Minister of the State had developed animosity against him and his detention is an act of political vendetta. It has been further alleged that the detaining authority has made the order of detention at the behest of the Chief Minister and without application of his independent mind to the facts and circumstances of the case. On 17-10-1974, the Bharatiya Lok Dal had decided to hold demonstrations all over Orissa raising certain demands mostly connected with the food scarcity and problems arising out of it. The order of detention was made maliciously with a view to frustrating the demonstration in Jajpur where the detenu was in charge of the organisation and, therefore, at 6.30 P. M. on 16-10-1974, that is, the previous evening of the proposed demonstration, the detenu was taken into custody.

Apart from the contentions that the order of detention has been made at the behest of the Chief Minister and is a mala fide act, the detenu has also contended that the groundswere not germane so far as maintenance of public order was concerned; the material particulars have not been furnished and, therefore, the detenu has been deprived of making an effective representation against the detention; the petitioner as a leader of the local public was entitled to educate them politely and the speech alleged to have been delivered, pamphlets said to have been published and the activities alleged to have been carried on could not be objected to as these were fundamental rights of the detenu guaranteed to him under the Constitution. The detenu has denied the allegation that he had ever called upon the people to murder the B. D. O. or to break the hands of the Food Minister. He admits to have issued the leaflets but takes the stand that its contents are not at all objectionable.

Though not specifically raised in the writ application, counsel for the detenu raised two more contentions, namely, the materials upon which reliance was placed for reaching the satisfaction did riot support the facts stated in the grounds which led the detaining authority to reach his satisfaction that detention of the petitioner was warranted and on the same charges when criminal proceedings are pending

detention could not be ordered.

4. The detaining authority in his return to the rule nisi has justified the order of detention and has denied the allegation that the order of detention has been made at the instance of the Chief Minister. In an additional affidavit filed by the detaining authority, he has made some clarifications.

5. Mr. Patnaik for the petitioner made it clear at the commencement of the hearing that apart from the bare allegation in the writ application that the detaining authority did not apply his mind independently to the matter and was prevailed upon by the Chief Minister in making the order of detention, there is no material to support the same. In view of the categorical denial by the detaining authority and in the absence of the proof of the allegation, we must hold that there is no merit in the contention that the detaining authority had not applied his mind and was persuaded to make the order at the instance of the Chief Minister.

6. The detention order has been challenged on several grounds, but in our view, it is unnecessary to examine all the contentions in view of the fact that the legal position is settled beyond doubt that if any of the grounds of detention turns out to be bad the order of detention has to go. We could accordingly examine two contentions advanced on behalf of the detenu for the purpose of this case, namely :--

(1) Whether the allegation in regard to the incident of 23-2-1974 could be utilised as a ground of detention?

(2) Whether the grounds furnished are germane for the order of detention on the score that detention was accessaryfor preventing the detenu from acting in a manner prejudicial to maintenance of public order? Contention No. 1.

7. The first ground of detention is on the basis of an event which took place during the night of 23-2-1974. This incident was immediately before the election to the State Legislative Assembly took place. The detenu was a candidate of the Pragiti Party (now merged in the B. L. D.) which was opposing the Congress party in the election. It has been alleged that the detenu and some of his followers entered into

the election office of the Congress party at Jajpur Road., assaulted certain inmates present there and physically lifted one Suresh Ch. Naik and took him away in detenu's jeep. This incident is almost eight months prior to the order of detention. The next incidents which have been referred to are of August and September, with a gap of more than five months from the first incident. The setting in which the incident of 23rd of February, 1974, is said to have taken place is very different from the other incidents. Indisputably the incident of February, 1974 was during the electioneering campaign when the tempo of election was high. This, in our view, is an unconnected event and there is no live link between this incident and the subsequent incidents. Learned Government Advocate took the stand that this could form a part of the chain of events for reaching satisfaction. Law is settled by now that the time lag is not the deciding factor. What is more important is the live link and that the incidents alleged should form part of a single chain so that satisfaction could be reasonably reached. In our view this incident is disconnected with the incidents alleged later and was not available to be used as a ground of detention. This ground, therefore, could not be utilised for the purpose of detention.

Contention No. 2.

8. The incidents of 1st of August, 1974 and 16th of September, 1974, as also 9th of October, 1974 appear to be of another type. The detenu seems to have had personal animosity against one Dwarikanath Singh, a resident of Sujanpur. The detenu held out threats against Dwarikanath intending to keep him away from the area. This seems to be the outcome of personal animosity between the detenu on one hand and Dwarikanath on the other and does not seem to be a matter with which the people at large in the locality or the even tempo of social life in the area could be connected.

Similarly the incident of 16th of September, 1974, centres round the assault on one Rangadhar Naik, who appears to have abused the detenu on an earlier occasion. This also seems to be a personal dispute between the two and does not seem to have any bearing on the even tempo of life in the locality. The allegation regarding the incident of 9-10-1974 with reference to Sarat Kumar Das is also an

incident of that type.

9. 'Public order' and 'law and order' were appropriately differentiated by the Supreme Court in the case of Arun Ghosh V. State of West Bengal, AIR 1970 SC 1228. It was pointed out that the true distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach of the act in question upon society. Acts similar in nature, but committed in different contexts and circumstances might cause different reactions: in one case it might amount to a breach of 'law and order' and in another, breach of 'public order'. Though 'public order' has not been defined, the distinction between 'law and order' and 'public order' has been clearly drawn and ordinarily a problem of law and order cannot constitute itself to be a problem against public order. The allegations in this case, as we have already indicated, clearly show that the detenu was involved in three private disputes; on the 1st of August, 1974, it was with reference to one Dwarikanath Singh against whom the detenu had animosity; on 16-9-1974, the centre of attack was one Rangadhar Naik, who was reported to have abused the detenu and, therefore, the detenu was interested in avenging his grievance and on 9-10-1974, one Sarat Kumar Das was the centre of attack on account of private animosity. These are instances which, in our opinion, have nothing to do with the public order in the locality and are breaches of law and rightly prosecutions have been launched against the detenu and his alleged gangmen. The ordinary law of the land can take care of these situations and there was no necessity for preventive action to be taken by invoking the extraordinary power vested in the detaining authority to meet aggravated situations. It must be borne in mind that the law of preventive detention confers extraordinary powers on the detaining authority which are not meant to be used to meet ordinary situations like the ones indicated here and since the consequences of an order of detention are serious and it takes away the individual liberty of a citizen so preciously enshrined in the Constitution without affording an opportunity of trial, the detaining authority is not entitled to invoke such extraordinary power in cases which can be adequately dealt with by the common law of the land. We are, thus satisfied that these three incidents given in the order of detention do not support the detention on the ground that the detenu was acting in a manner prejudicial to public order.

10. The legal position being settled that when one ground fails the order of detention fails because the order of detention is based upon subjective satisfaction of the detaining authority and when one prop is removed, it is not for the court to resurrect the order on the remaining grounds, the order of detention in this case must fail. Without examining the other contentions, we would quash the order of detention and direct that the petitioner be set at liberty forthwith.

Panda, J.

11. I agree.

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