

# Preventive detention is an exceptional power that must be exercised sparingly: Orissa High Court

Sk.Mabud @ Mamud @ Madud

..... Petitioner

-Versus-

State of Odisha & another

..... Opp. Parties

Case Number: W.P.(CRL.) NO.82 OF 2020

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## Facts:

- The petitioner Sk. Mabud was under judicial custody in District Jail Balasore in connection with PS Case No.319/2019 u/s 395 IPC and 25/27 Arms Act.
- Superintendent of Police, Balasore in his letter to District Magistrate appealed for petitioner's detention under NSA Act citing his involvement in 20 criminal cases since 2013.
- District Magistrate ordered petitioner's detention on 12.02.2020 and provided grounds of detention on 16.02.2020.
- The detention order was approved by the State Government and confirmed by the Advisory Board. It was further extended twice.

## **Court's Opinions:**

- Preventive detention is to prevent someone from doing something, not to punish for what has already been done.
- The detaining authority should have disclosed material indicating likelihood of breach of public order. Relying simply on criminal cases without such material is not enough.
- There should be a live link and nexus between the detention order and the alleged offences.
- The detaining authority failed to show that the petitioner's activities posed a threat to public order.
- The detention order appears to have been passed without due application of mind. The authority relied simply on a list of cases provided by the Superintendent of Police.
- The detention order violates the safeguards and requirements laid down by the Supreme Court for preventive detention.

## **Petitioner's Arguments:**

- The detaining authority did not disclose the basic facts and materials that led it to conclude that the petitioner is a threat to public order.
- The detention order was passed on 12.02.2020 but grounds provided only on 16.02.2020, indicating non-application of mind.
- The authority relied on stale and acquitted cases. The cases affect individuals, not public order.
- Petitioner was not given proper materials to make a representation against the detention.

## **State's Arguments:**

- The detention order was passed after due consideration and application of mind.
- Petitioner's release on bail could lead to resumption of

criminal activities prejudicial to public order.

- The grounds of detention were provided within the statutory period of 5-15 days.
- Petitioner's activities have disrupted public order and peace in the locality.

**Referred Laws:**

- Article 22(2) of the Constitution
- Sections 3(2) and 3(4) of the National Security Act, 1980
- Relevant Supreme Court judgments on preventive detention

**Conclusion:**

The High Court allowed the petition and quashed the detention order, holding it to be illegal, improper and without application of mind.