
(1982) 07 PAT CK 0006
In the Patna High Court
Case No : Cr.W.J.C. No. 57 of 1982 (R)

Ajoy Kumar Gupta

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1983) 31 BLJR 70

Hon'ble Judges : Sushil Kumar Jha, J; Satyeshwar Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—By this application under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing Annexure-4 order dated 3rd April, 1982, passed by the State Government u/s 12(3) of the Bihar Control of Crimes Act, 1981 (the Act) whereby the order of detention of the petitioner issued by the respondent No. 2, was approved by the State Government. This application was filed in this Court on 4th May, 1982. When the application was pending the State Government after obtaining opinion of the Advisory Board, passed an order on 25-5-1982, detaining the petitioner up to 24th March, 1983. A prayer has been made by the petitioner for quashing this order also of the State Government.

2. The facts which are necessary to take notice for disposal of this application are that while the proceeding u/s 3 of the Act was pending, respondent No. 2 passed an order u/s 12 of the Act for detention of the petitioner which is Annexure-3 to this application. The grounds for detention were served on the petitioner, which is Annexure 3-A filed along with the supplementary affidavit. The petitioner filed a representation against the order of detention and the State Government after obtaining approval of the Advisory Board passed an order against the petitioner, as stated above, on 25-5-1982.

3. The order of detention was challenged by the petitioner mainly on the ground that the Detaining Authority has passed the order of detention of the petitioner on irrelevant grounds. It was stated that in Annexure 3-A there is reference of four cases, in which the petitioner was said to be an accused. Out of these four cases, the petitioner was acquitted after trial in Sadar P.S. Case No. 15, dated 12-4-1979. With regard to Sadar P.S. Case No. 33 dated 25-1-1980 it was submitted that an application for withdrawal of the case had been filed by the informant and the same is pending disposal. The regard to other two cases, it was submitted that in Sadar P.S. Case No. 315 dated 23th August, 1981, the petitioner was not even named and the other is merely a Station Diary Entry No. 410 dated 15-4-1981. It was contended that in view of the fact that the petitioner was acquitted in Sadar P.S. Case No. 15 dated 12-4-1979 he was not named in Sadar P.S. Case No. 315 dated 20th August, 1981 and from the station diary entry it appeared that no offence has been made out so far the petitioner is concerned, no order for detention for the petitioner could have been passed u/s 12 of the Act.

4. The contention of the learned Counsel for the petitioner that the detention order was bad because the detaining authority had taken into consideration a case in which the petitioner was acquitted has no merit. If an anti-social person is accused in several cases, merely acquittal of that person in a criminal case will not be sufficient to hold the order of detention bad" in law. However, with regard to the other contention that the detaining authority had taken into consideration a case in which the petitioner was not even named and also the station diary entry which did not make out any offence, so far the petitioner is concerned it has substance. It has not been disputed by the learned Counsel for the respondent that even if one of the grounds of detention is irrelevant, the order of detention becomes bad. In view of the fact that the petitioner is not an accused in one case which has been taken into consideration by the detaining authority for detention of the petitioner, the order of detention passed against the petitioner cannot be sustained. The order of detention cannot be sustained also because of the fact that the station diary entry which does not make out any offence against the petitioner has also been taken into consideration by the detaining authority. The order of detention of the petitioner, therefore, cannot be sustained.

5. In the result, the application is allowed. The order as contained in Annexure 4 and also the order passed by the State Government after the approval of the Advisory Board on 25-5-1982 are quashed. The petitioner is directed to be set at liberty, if not wanted in connection with any other case.

Sushil Kumar Jha, J.

6. I agree. I must, however, highlight the point that four cases have been mentioned in the grounds of detention for the purpose of justifying the order passed against the detenu. Out of these four cases, as my learned brother has already pointed out, two are non est in law, namely, Sadar P.S. Case No. 315

dated 20th August, 1981, in which the petitioner has not even been named and the Station Diary Entry No. 415 dated 15-4-1981, which makes] out no offence against the petitioner. Two out of the four being non est in law the order of detention must be struck-down on this ground alone.