

(2013) 02 PAT CK 0071

In the Patna High Court

Case No : Criminal Writ No. 1058 of 2012

Anil Singh @ Makhru Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2), 12(3), 19, 21, 22

Citation : (2014) 1 PLJR 220 : (2014) 2 RCR(Criminal) 412

Hon'ble Judges : Shyam Kishore Sharma, J;Aditya Kumar Trivedi, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, Imteyaz Ahmad and Ravi Ranjan, for the Appellant; Lalit Kishore for State, for the Respondent

Judgement

Aditya Kumar Trivedi, J.—Heard learned counsel for the parties. Petitioner has sought for quashing of order of detention dated 6.8.2012 passed by District Magistrate, Lakhisarai in terms of Section 12(2) of the Bihar Control of Crimes Act (henceforth used as Act), order dated 13.8.2012 in terms of Section 12(3) of the Act passed by the State as approving the order dated 6.8.2012 as well as order dated 5.9.2012 in terms of Section 21 read with 22 of the Act passed by the State Government confirming the order of detention dated 6.8.2012.

2. On a report submitted by S.P., Lakhisarai, showing the criminal antecedent of the petitioner counting fifteen as well as his subsequent involvement in other nine cases bearing Barhaiya P.S. Case No. 9/2011, Barhaiya P.S. Case No. 10/2011, Barhaiya P.S. Case No. 19/2011, Barhaiya P.S. Case No. 35/2011, Lakhisarai P.S. Case No. 145/2011, Lakhisarai P.S. Case No. 229/2011, Barhaiya P.S. Case No. 60/2011, Chanan P.S. Case No. 9/2011, Suryagarha P.S. Case No. 116/2012 as well as incorporating the fact that petitioner languishing behind bar and eagerly trying for bailed out would cause serious threat to public safety after being released satisfied the District Magistrate, Lakhisarai for passing an order of preventive detention and according vide order dated 6.8.2012 passed the same which passed through the mechanism so prescribed under the law having been

approved at the end of State vide order dated 13.8.2012 as well as its confirmation vide order dated 5.9.2012 after having been adjudicated upon by the Advisory Board in terms of Section 19 of the Act.

3. While assailing the successive orders it has been urged on behalf of petitioner that the learned Detaining Authority had failed to adopt and comply the basic requirement of law because of the fact that there happens to be total absence of disclosure where any bail petition has been filed on behalf of petitioner at that stage when order for preventive detention was passed. Also submitted that preventive detention is permissible only in case of public safety and not in a case relating to law and order problem which could be considered deficiency on the part of the administration. Furthermore, it has been submitted that application of preventive detention should be made only in case when substantial penal provision is found to be ineffective.

4. In the aforesaid backdrop, it has been argued on behalf of petitioner that the order of detention dated 6.8.2012 lacks the same and on account thereof it could safely be said that the process of satisfaction of the Detaining Authority was influenced by report of the S.P. which appears to be non-permissible in the eye of law. Hence, the order of detention followed by order of approval as well as confirmation suffer from inherent lacuna and are accordingly fit to be set aside.

5. At the other hand, the learned counsel for the respondents while controverting the submission raised on behalf of petitioner submitted that report of the S.P. was only an information with regard to activities of the petitioner which after minute scrutiny lent to the satisfaction of the Detaining Authority requiring the petitioner to be prevented by an order of preventive detention. Therefore, there happens to be no illegality or infirmity in between which could justify argument raised on behalf of petitioner. Satisfaction of the Detaining Authority is based upon sound principle of law which is itself evident from cursory perusal of the order impugned. There happens to be no laches on the part of the State while approving as well as confirming the order after having consented by the Advisory Board.

6. Preventive detention is a measure to detain a delinquent when his activities are found to be prejudicial to the interest of State, community endangering public order. Preventive detention is the process by which the fundamental right enshrined under Part-III of the Constitution is allowed to be seized. It is a mechanism by which an individual is forbidden by having his placement behind bar from endangering public order and therefore its recognition happens to be under exception. This exception has to be tested and passed through the mandate of concerned law in most expeditious as well as judicious manner so that the constitutional bonanza to its citizen recognized under Part-III of the Constitution should not be found to be infringed in callous, arbitrary, mechanical manner. Time-to-time the procedure has been tested and criteria has been evolved by the Hon''ble Apex Court while dealing with preventive detention more particularly when detenu happens to be under custody since before. The Hon''ble

Apex Court had given nod for application of preventive detention at a time when the detenu happens to be behind bar and for that reference may have Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, wherein it was held as follows:--

12. As an abstract proposition of law, there may not be any doubt that Section 3(1)(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail.... Therefore, we are satisfied that the question as to whether an order of detention can be passed against a person who is in detention or in jail, will always have to be determined in the circumstances of each case.

7. Later on, while reiterating the view the Hon''ble Apex Court had further clarified that in a case there happens to be no imminent possibility of being the detenu released from jail, there was no purpose for application of preventive detention as has been held in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others,], wherein it was held as follows:--

7. It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detenu, the detenu was in jail. There is no indication that this factor or the question that the said detenu might be released or that there was such a possibility of his release. was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedom of our citizens.

(underlining for emphasis)

8. In Dharmendra Suganchand Chelawat and another Vs. Union of India and others, the Hon''ble Apex Court had cast duty upon the Detaining Authority for having been acknowledged with the following facts before passing of detention order:--

21. The decisions referred to above lead to the conclusion that an order for

detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

(underlining for emphasis)

9. The aforesaid view has again been reiterated in the case of *Kamarunnissa and Others Vs. Union of India and another*, wherein it was held as follows:--

13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court.

(underlining for emphasis)

10. Mere asserting that the detenu may be released on bail will not justify the order of detention rather he should incorporate that there is every likelihood that detenu will be released on bail which has been further elaborated in the case of *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, -

11. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail orders in similar cases, which has not been done in the present case. A mere ipse dixit statement in the ground of detention cannot sustain the

detention order and has to be ignored.

And recently in a case of Huidrom Konungjao Singh Vs. State of Manipur and Others, wherein it was held as follows:--

9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:--

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition.

11. Now coming to the facts in hand it is apparent from the order dated 6.8.2012 that mandate of law as envisaged by the Hon''ble Apex Court referred above is found to be deficient. Accordingly, successive orders are set aside. Petition is allowed. Petitioner is directed to be released forthwith if not wanted in any other case.