

(1975) 12 PAT CK 0009

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No's. 183 and 187 of 1975

Bhagwan Singh and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-1975

Acts Referred:

Maintenance of Internal Security Act, 1971 — Section 8(1)

Citation : AIR 1977 Patna 39 : (1977) 10 PLJR 1

Hon'ble Judges : S.N.P. Singh, C.J.; S.K. Jha, J.; Hari Lal Agrawal, J

Bench : Full Bench

Advocate : Ganga Prasad Roy, Narayan Roy and R.S. Pradhan, in Cri. W.J.C. No. 183 of 1975 and Nagendra Rai and Narayan Roy, in Cri. W.J.C. No. 187 of 1975, for the Appellant; B.S. Sinha, Govt. Pleader I and Sachchidanand Jha, Jr. Counsel to Govt. Pleader No. 1 in Cri. W.J.C. No. 183 of 1975 and S.S. Hassan, Standing Counsel No. 1 and Devendra Prasad Sinha, Jr. Counsel to Standing Counsel No. 1 in Cri. W.J.C. No. 187 of 1975, for the Respondent

Judgement

S.N.P. Singh, C.J.—These two habeas corpus applications under Article 226 of the Constitution have been referred to a Full Bench for the decision of a common question of law and they are being disposed of by this judgment.

2. Bhagwan Singh, the petitioner of Cr. W. J. C. No. 183 of 1975, was lodged in Buxar Jail on the 21st of March, 1975, in connection with Itarhi P. S. Case No. 10 (2) 75 (State v. Unknown). On that very date a copy of the order of detention passed by the District Magistrate Bhojpur, u/s 3 (1) (a) (ii) read with Sub-section (2) of the Maintenance of Internal Security Act, 1971 (hereinafter to be called "the Act") was served on him. The grounds of detention were subsequently drawn up by the District Magistrate and were served on the petitioner on the 29th of March, 1975. The reasons for serving the grounds of detention beyond five days from the date of detention of the petitioner were not mentioned by the District Magistrate in the grounds of detention. Subsequently on the 3rd of April, 1975, the District Magistrate recorded the reasons and those were served on the petitioner on the 6th of April, 1975.

3. Sondhari Singh the petitioner of Cri. W. J. C. No. 187 of 1975, was taken in jail custody on the 6th of May, 1975, in pursuance of an order of detention dated the 3rd of May, 1975, passed by the District Magistrate, Patna, u/s 3 (1) (a) (ii) read with sub-section (2) of the Act. A copy of the order of detention was served on the petitioner on the very day he was arrested. The grounds of detention were, however, served on him on the 19th of May, 1975. In the grounds of detention the District Magistrate recorded in detail the reasons for not serving them between the 11th of May, 1975, and the 18th of May, 1975.

4. It is an admitted position in both the cases that the District Magistrates did not record reasons for not serving the grounds for the period of first five days since the date of detention.

5. The common question of law, which falls for consideration in the two cases, is whether the reasons for each day's delay have to be recorded when the delay in serving the grounds is more than five days since the date of detention or only reasons for the delay after five days and within fifteen days have to be recorded.

6. Section 8 (1) of the Act is the relevant section and it reads as under;

"8 (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

The expression "as soon as may be" has been interpreted in a number of cases of this Court and the Supreme Court. In the case of Murat Patwa Vs. Province of Bihar, a Full Bench of this Court held that the phrase "as soon as may be" as used in Section 4 of the Bihar Maintenance of Public Order Act, 1947 means "as early as is reasonable in the circumstances of the particular case".

In that case it was observed as follows:--

"Beyond saying that it should ordinarily be possible to communicate the grounds to a detenu within a comparatively short period of time and that after the lapse of such a period the onus will shift to the authority in question to show that the grounds were served as soon as was reasonable, we think it better not to indicate any particular period as being sufficient to shift the onus of proof."

In the case of Tabarak Khan Vs. Province of Bihar, it was observed that there was no decision to the effect that the words "as soon as may be" meant that the grounds of detention should be served in all cases within fifteen days from the date of the order of detention. In the case of Ujagar Singh Vs. The State of The Punjab, , while interpreting the expression "as soon as may be" in Section 7 of the Preventive Detention Act, their Lordships of the Supreme Court observed as follows:

"The Act does not fix the time within which the grounds should be furnished to the person detained. It merely states that the communication must be "as soon as they be". This means reasonable despatch and what is reasonable must depend on the facts of each case. No arbitrary time limit can be set down."

In the case of Abdul Jabar Butt Vs. State of Jammu and Kashmir, , Das, C. J., observed as follows:--

"..... to communicate the grounds "as soon as may be" may well be said to mean to do so within a reasonable time with an understanding to do it within the shortest possible time."

The learned Chief Justice further observed:

"Whenever the question of reasonableness arises in computing the period of time the Court has perforce to have regard to the particular circumstances of the case in which the question arises for decision. It may not be possible in many cases to affirmatively say or to precisely quantify the period of time by reference to hours, days or months; nevertheless, it is possible having regard to the circumstances of the case, to say whether the thing done was or was not done "as soon as may be", i.e., within the time which was reasonably convenient or requisite."

The expression "as soon as may be" was considered by the Supreme Court in the context of Article 22(5) of the Constitution in the case of Rashid Sk. Vs. State of West Bengal, and it was observed as follows:--

"The use of the words "as soon as may be" is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - The right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion."

7. In Section 8 (1) of the Act the expression "as soon as may be" has been qualified by the expression "but ordinarily not later than five days". It clearly means that the grounds of detention if served within a period of five days from the date of detention, it will be deemed to have been served within a "reasonable time". The Legislature has thus fixed a period of five days from the date of detention to be a "reasonable time" for service of the grounds of detention. In the latter part of the section a limitation of fifteen days to communicate the grounds from the date of detention has been fixed in exceptional circumstances and for reasons to be recorded in writing. A plain reading of Section 8 (1) shows

that the expression "for reasons to be recorded in writing" does not qualify the expression "ordinarily not later than five days". It qualifies the expression "not later than fifteen days". Thus I am of the view that when the grounds of detention are served upon a detenu within five days of the date of detention, it will be deemed to have been served within a reasonable time and no reason for each day's delay has to be recorded. Even if the grounds of detention are served on the detenu later than five days from the date of detention, the appropriate authority will not have to record reasons for not serving the grounds for the first five days. In such a case he is required only to give reasons for not serving the grounds only for the period beyond five days from the date of detention,

8. In *Shri Baleshwar Prasad Yadav v. State of Bihar*, (Cri. W. J. C. No. 648 of 1974) disposed of on 27-1-1975 (Pat), a Bench of this Court observed as follows:--

"Although the grounds do not suffer from any vagueness or other infirmity but even then this order of detention cannot be sustained. The petitioner, as indicated above, was arrested on 30th October, 1974, and the grounds on which he was taken into custody should have been served on the petitioner "as soon as may be", but it was served on 13-11-1974. If the grounds are not served for the first five days after the detenu is taken into custody, no explanation of delay has to be supplied to the petitioner but in a case when on account of any exceptional circumstance, the grounds could not be served on the petitioner on the day of the arrest or within five days subsequent thereto then reasons to be recorded in writing have to be supplied indicating as to what prevented the authority from supplying the grounds earlier. In case the grounds are not supplied within five days, as I have mentioned above, no explanation has to be given but if they are supplied beyond the period of five days then the exceptional circumstance and the reasons for the delay have to be communicated to the detenu and in that event every day's delay beginning from the day of arrest has to be explained."

In *Sahabudin Ahmed v. State of Bihar*, (Cri. W. J. C. No. 654 of 1974) disposed of on 23-12-1974 (Pat), one of the points which was urged was that the explanation which the detaining authority had given regarding the delay in the communication of the grounds to the detenu did not explain the failure of the detaining authority to communicate the grounds within five days of the date of detention. A bench of this Court held that there was infringement of the right of the detenu to receive the grounds of detention at the earliest opportunity as guaranteed to him under Article 22(5) of the Constitution. I respectfully differ with the views which have been taken in the two cases. On a reasonable interpretation of Section 8 (1) of the Act, it is manifest that no reason has to be recorded for not communicating the grounds of detention for the first five days from the date of detention in any circumstance. The orders of detention in the instant cases, therefore, cannot be quashed on the mere ground that the detaining authorities concerned did not record reasons for not communicating the grounds to the petitioners during the first five days from the date of their

detention,

9. I will now consider the other grounds on which the validity of the orders of detention in the two cases has been challenged. In the case of Bhagwan Singh (petitioner of Cri. W. J. C. No. 183 of 1975) the District Magistrate drew up the grounds of detention on the 29th of March, 1975, and they were communicated to the petitioner on that very day. As already stated the reasons for serving the grounds of detention beyond five days from the date of detention were not given by the "Dist. Magistrate in the grounds of detention. The Dist Magistrate recorded the reasons subsequently on the 3-4-1975, and they were served on the petitioner on the 6th of April, 1975. It was submitted by learned counsel appearing for the petitioner that in not recording the reasons for non-communication of the grounds of detention beyond five days from the date of detention in the grounds of detention but recording the reasons subsequently, the District Magistrate contravened the mandatory provisions of Section 8 (1) of the Act. There is substance in this contention. Section 8 (1) of the Act does not provide for recording of the reasons subsequently. On the contrary, a plain reading of the section shows that it contemplates that the reasons for the delay in the communication of the grounds must be recorded in the grounds of detention themselves. In the instant case the District Magistrate has thus contravened the mandatory provisions of Section 8 (1) of the Act, which has rendered the order of detention invalid. In this connection I may refer to a Bench decision of this Court in *Biswa Mohan Kumar Sinha v. State of Bihar*, (Cri. W. J C. No. 159 of 1974) disposed of on 3-9-1974 reported in ILR (1974) 53 Pat 884, wherein it was observed as follows:

"The reasons for the exceptional circumstance must be known to the detaining authority when it communicates the grounds of detention to the detenu 5 days after the date of his detention and it is natural to expect that the detaining authority should include in the grounds of detention the reasons for the exceptional circumstance why the ground of detention could not be communicated within 5 days of the date of detention, so that the detenu might file an effective representation. When the personal liberty of a person is at stake by an executive order passed under the provisions of the Act, any delay in communicating the ground beyond 5 days from the date of detention without any exceptional circumstance will be an irresponsible act on the part of the detaining authority because by such act the detaining authority is not affording the detenu earliest opportunity to make an effective representation. The constitutional requirement under Article 22(5) of the Constitution of India is not only to furnish to the detenu the grounds of detention but also to afford earliest opportunity to make the representation to the authority concerned. If the earliest opportunity as provided in Section 8 of the Act has not been afforded to the detenu, the latter must be informed as to why the earliest opportunity has not been afforded to him so that he could also agitate that point before the authority concerned. If it is argued that the detaining authority has complied with the provisions of Section 8 of the Act with regard to the recording of reasons in writing by

communicating the exceptional circumstance to the Govt., it has to be held that this extra material which is furnished to the State Govt. for the purpose of confirmation or approval of the order of detention was not furnished to the petitioner and thus, the petitioner's right under Article 22(5) of the Constitution of India is stultified."

I entirely agree with the view which has been taken in that case regarding the interpretation of Section 8 (1) of the Act and the constitutional right of the detenu under Article 22(5) of the Constitution.

10. Learned counsel appearing for the petitioner raised some other contentions but it is not necessary to consider them as I am clearly of the view that the order of detention cannot be sustained because of non-compliance with the mandatory provisions of Section 8 (1) of the Act.

11. Learned counsel appearing for Sondhari Singh (petitioner of Cri. W. J, C. No. 187 of 1975) challenged the validity of the order of detention on the following additional grounds:

(1) That the grounds of detention served on the petitioner show that the subjective satisfaction of the District Magistrate was based not only on the grounds of detention but on other factors, the details of which were not supplied to the petitioner as a result of which he could not make an effective representation.

(2) That the explanation for not furnishing the grounds on the 12th of May, 1975, is not satisfactory; and

(3) That the order of detention passed by the District Magistrate is mala fide because the petitioner filed a case before the Sub-divisional Magistrate, Dinapur, against the police officers for various offences.

12. In the introductory paragraph of the grounds of detention the District Magistrate has simply mentioned the thirteen cases in which the petitioner was involved. Thereafter he incorporated the grounds of detention in three paragraphs. In the grounds of detention the details of three cases have been given. By reading the grounds of detention it is clear that the District Magistrate has not based his subjective satisfaction on any of the cases other than the three cases, the details of which are mentioned in the grounds of detention. I, therefore, do not find any substance in the first ground on which the validity of the order of detention has been impugned.

13. The following reasons were recorded by the District Magistrate for not communicating the grounds on the 12th of May, 1975:

"On the 12th May, 1975, a meeting was fixed up at 10 A. M. in the office chamber of the Commissioner, Patna Division, Patna, to discuss law and order problems relating to Patna University and to devise ways and means to curb out the increasing lawlessness in the University campus. At 11 A. M. on the same

day, another meeting was fixed up of the Ganga Bridge Committee in the Vidhan Parishad where I was specially invited to sort out problems relating to land acquisition and rehabilitation of the displaced persons. At 12-30 P. M. another meeting was fixed up at the level of the Home Secretary to discuss certain emergency schemes relating to the town of Patna where too my presence was necessarily required. At 4 P. M. I was busy in conducting a meeting of the P. P. and A. P. P. S. and from 6 P. M. again there were discussions regarding Naxalite activities in Patna District. As such, grounds of detention could not be recorded on the 12th May, 1975."

According to learned counsel, the District Magistrate could have avoided attending the meeting of the Ganga Bridge Committee in the Vidhan Parishad. He might as well have postponed the meeting of the Public Prosecutor and Assistant public Prosecutors which was held at 4 P. M. that day. It is difficult to appreciate this contention. It appears that the District Magistrate was specially invited to attend the meeting of the Ganga Birdge Committee because there were problems in relation to land acquisition and rehabilitation of displaced persons. As the head administrator of the district, it is the duty of the District Magistrate to see that the criminal cases of the district are conducted properly by the Public Prosecutor and Assistant Public Prosecutors. It cannot, therefore, be said that the conducting of a meeting of Public Prosecutor and Assistant Public Prosecutors by the District Magistrate was an unimportant matter and that could have been avoided. For the foregoing reasons I do not find any substance in the second ground also.

14. Now I proceed to consider whether there is any substance in the third ground on which the validity of the order of detention has been challenged. In paragraph 4 of the petition some details about the criminal case instituted by the petitioner against the police officers of Maner Police Station have been given. As stated in paragraph 5 of the petition that complaint case was dismissed by the Sub-divisional Magistrate and a criminal revision being Criminal Revision No. 144 of 1974 is pending before the Sessions Judge, Patna, against that order. In paragraph 6 of the petition it has been stated that because of the said annoyance the police has falsely implicated the petitioner in a number of cases. In paragraph 7 of the petition it has been stated that on the 7th of February, 1975, an infor-matory petition was filed by the petitioner before the Sub-divisional Magistrate stating therein that the police of Maner was threatening him to implicate him in case. There is no assertion in the petition that the District Magistrate was influenced by the police to pass the order of detention. In paragraph 22 of the petition it has simply been stated that the District Magistrate has not applied his mind to the information supplied to him by the police and he has acted mechanically on the information furnished by the police. I find it difficult to hold that the District Magistrate has acted mechanically. The very fact that the District Magistrate has placed reliance on the facts of three cases only out of thirteen cases for basing his subjective satisfaction shows that the District Magistrate did not act mechanically on the report of the police but applied his

mind and then passed the order of detention. It cannot, therefore, be said that the order of detention suffers from the vice of mala fide or that the District Magistrate has passed a mechanical order.

15. As I do not find any substance in any of the grounds on which the validity of the order of detention of Sondhari Singh has been challenged, Cr. W. J. C. No. 187 of 1975 is dismissed.

16. For the reasons already given, the application of Bhagwan Singh (petitioner of Cri. W. J. C. No. 183 of 1975) is allowed, the order of detention contained in Annexure "1" to the writ application is held to be invalid and it is accordingly quashed. It is directed that Bhagwan Singh be set at liberty forthwith unless his presence in jail is required in connection with some other case.

H.L. Agrawal, J.

I agree.

S.K. Jha, J.

I entirely agree.