
(2006) 04 PAT CK 0096
In the Patna High Court
Case No : Cr.WJC No. 412 of 2005

Binod Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

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

Citation : (2006) 2 PLJR 497

Hon'ble Judges : S.M. Mahfooz Alam, J; Chandramauli Kr., J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, for the Appellant; Piyush Lall, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Pd. and S.M. Mahfooz Alam, JJ.—This application has been filed for & quashing the order dated 5.4.2005 (Annexure-1) whereby the District Magistrate, Begusarai passed order for detention of the petitioner. Further prayer made by the petitioner is to quash the order dated 15.4.2005 (Annexure-2) and order dated 27.5.2005 (Annexure-3) whereby the State Government approved and confirmed the order of detention and directed that the petitioner shall be detained till 4.4.2006. Shorn of unnecessary details facts giving rise to the present writ application are that the District Magistrate, Begusarai by order as contained in Memo dated 5.4.2001 (Annexure-1) being satisfied that petitioner's detention is necessary for maintaining public order, in exercise of its power u/s 12(2) of the Bihar Control of Crimes Act, 1981, hereinafter referred to as the Act, passed order for his detention. Fact that petitioner was in judicial custody finds mentioned in the order of detention and at the same time it is also mentioned that petitioner is making attempt for release on bail. The District Magistrate forwarded the order of detention to the State Government and the State Government in exercise of its power u/s 12(3) of the Act, approved the order of detention. The matter was placed before the Advisory Board, which made its recommendation. In conformity with the recommendation of the Advisory Board,

the State Government by order dated 27th May, 2005 (Annexure-3) confirmed the order of detention and directed that the petitioner shall be detained till 4.4.2006.

2. Petitioner has also been served with the grounds of detention. Petitioner made representation against his detention, which was rejected and the fact of its rejection was communicated to him by memo dated 14.5.2005. Undisputedly, the prayer for bail of the petitioner was rejected by this Court on 31st of January, 2005 and on 5.4.2005, the day on which District Magistrate passed order of detention, no application for grant of bail was pending before any Court.

3. Mr. Ajay Kumar Thakur, appearing on behalf of the petitioner raises a very short point. He submits that at the time, when the District Magistrate passed the order of detention, the petitioner was already in jail and therefore, there was no occasion for the detaining authority to pass the order of detention. In fairness to Mr. Thakur he concedes that an order of detention can be passed when a detenu is in custody, but before the order of detention is passed the detaining authority has to be satisfied that the detenu is likely to be released on bail. He submits that in the present case, there is nothing on record to suggest that petitioner was likely to be released on bail. He points out that the prayer of the petitioner for grant of bail was rejected on 31st January, 2005 and no application filed by the petitioner for bail was pending on the date when the District Magistrate passed the order of detention. This according to Mr. Thakur, itself renders petitioner's detention illegal. In support of the submission, reliance has been placed on a judgment of Supreme Court in the case of T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi vs. State through Secretary & Anr., reported in 2006(2) Supreme 115. Our attention has been drawn to paragraph 14 of the judgment which reads as follows:

"We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the Courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail, the inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated December 13, 2005."

4. Mr. Piyush Lal, J.C. to AAG III, however, contends that as the District Magistrate was satisfied that the petitioner is making efforts to get bail, he did

not err in passing the order of detention, which was ultimately confirmed and approved by the State Government.

5. Having appreciated the rival submission, we find substance in the submission of Mr. Thakur and authority relied on clearly supports his submission. The District Magistrate while passing the order of detention was aware of the fact that the petitioner was in judicial custody but on the purported ground that he is making efforts to get bail led him to pass the order. However, nothing has been placed on record to show that in fact, petitioner had made any attempt to get bail or any application filed by him for bail was pending for consideration before any Court. There was absolutely no material before the detaining authority on the basis of which he could have been satisfied that the petitioner is likely to be released on bail. This, in our opinion itself renders petitioner's detention illegal. In the result, the application is allowed, impugned orders are set aside and petitioner is directed to be set at liberty forthwith, unless required in any other case.