
(2011) 09 JH CK 0069

In the Jharkhand High Court

Case No : Writ Petition H.B (Cr.) No. 246 of 2011 (D.B.)

Dahu Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 166, 21
Jharkhand Control of Crimes Act, 2002 — Section 12(2), 12(3), 17
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2011) 09 JH CK 0069

Hon'ble Judges : Poonam Srivastav, J;D.N. Upadhyay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—The instant habeas corpus petition is preferred by the Petitioner challenging the detention order dated 27th June, 2011 (Annexure 3) passed by the District Magistrate, Sahebganj (respondent No. 3) under the provisions of the Jharkhand Control of Crimes Act, 2002 (hereinafter referred to as "the Act"); the order dated 16th July, 2011 contained in Memo No. CCA/24/01/2011-2749 (Annexure 4) passed by the Deputy Secretary, Home Department, Government of Jharkhand (respondent No. 2) and also the order dated 19th August, 2011 contained in Memo No. 3/CCA/24/01/2011-3276 (Annexure 5) whereby the Respondent No. 2 has affirmed the order of Respondent No. 3 dated 27th June, 2011.

2. The detenu Dahu Yadav Son of Pashupati Yadav, Village Shovanpur Bhatta, P.O. and P.S. Sahibganj is detained u/s 12 (2) of the Act. The District Magistrate recorded his satisfaction for detention of the Petitioner on a proposal preferred by the Deputy Superintendent of Police, Sahibganj Mufassil (respondent No. 4) vide letter dated 13th May, 2011, letter No. 927 dated 13th May, 2011 was written with the complete report regarding criminal history and the cases in which he was involved. The said letter dated 13th May, 2011 is Annexure 1 to the

writ petition. A list of criminal cases was appended to the said letter consisting of previous criminal history of eleven cases and the cases pertaining to the year 2011 being seven in number. The last case registered against the Petitioner was on 2nd May, 2011 under Sections 147, 148, 149, 324, 341, 342, 307 of the Indian Penal Code and Section 27 Arms Act. The detenu Dahu Yadav along with his associates were pressurising Smt. Chanmati Devi, Up Mukhiya of Village Sobhanpur Panchayat while distribution of essential commodities to the villagers below the poverty line was carried out. Husband of Smt. Chanmati Devi, namely, Bali Ram Yadav tried to intervene who was manhandled and injured by the Petitioner and was locked in a public toilet. He was released only after arrival of the police. Dahu Yadav was sent to jail.

3. On perusal of Annexure 1, it transpires that the nearby residents were terrorised and an atmosphere of fear prevailed amongst all the nearby residents, who were also questioned by the police but none of them were ready to disclose the details of the incident. The residents locked themselves in their respective houses and thus the public order was completely disrupted. A detail report was sent to the District Magistrate, Sahibganj (respondent No. 3) vide letter dated 13th May, 2011 and, at the same time, a letter was also sent to the Deputy Commissioner. The District Magistrate passed the order vide Annexure 3 u/s 12 (2) of the Act expressing his satisfaction that an atmosphere of terror has prevailed and the public life stands completely hampered and no one is ready to give their statement or open their mouth. It was directed that aforesaid Dahu Yadav be detained in the Central Jail at Dumka for prevention of public order. The approval of the detention order is Annexure 4 u/s 12 (3) dated 16th July, 2011 and the emphasis of the learned Counsel is that this was beyond the prescribed period of 12 days or an extended period of 15 days as provided u/s 17 of the Act and, therefore, the order of detention, by laps of the aforesaid period was rendered no nest. The Advisory Board confirmed the detention order on 19th August, 2011 whereby the Petitioner was detained for a period of twelve months i.e. up-till 26th June, 2012.

4. Mr. Rajeeva Sharma, Senior Advocate assisted by Sarfaraz Akhtar, Mithilesh Singh and Anuj Burman, Advocate appearing on behalf of the Petitioner has challenged the order of detention on a number of grounds. The first ground is that the order of detention passed by the Deputy Commissioner, Sahebganj u/s 12 (2) of the Act was granted approval on 16th July, 2011 and there is definitely a delay of six days, even if the extended period of 15 days is counted from the date of order of detention. Thus the Advisory Board could not confirm an any nest order. The order of detention is, therefore, liable to be set at naught and the Petitioner be released forthwith.

5. While impressing upon the Court regarding delay in granting approval, learned Counsel has emphatically argued that the Act provides specific period for grant of approval and since the order of detention amounts to curtailment of valuable fundamental rights of liberty guaranteed under Article 21 of the Constitution of

India, the provisions and the period prescribed are to be followed strictly and slightest deviation has a necessary consequence of rendering the order illegal and without jurisdiction. The stress of the learned Counsel is that the procedure provided has not been followed and, therefore, the order of approval which is admittedly beyond time is in violation of the prescribed procedure. Reliance has been placed on a decision of the Apex Court in *Ranjit Thakur v. Union of India* and Ors. 1987 PLJR (S.C.) 79). The said case relates to the proceedings of Court Marshal which is a summary proceedings and the Act constitutes a special law conferring a special jurisdiction and prescribing special procedure for trial of an offence under the Martial Law. The Apex Court held that deviation from the prescribed procedure imparts a basic infirmity and militates against and detracts from the concept of a fair trial.

6. The next argument is on the basis of a supplementary affidavit filed on behalf of the detenu regarding the order of the District Magistrate being based on insufficient material. The report preferred by the Superintendent of Police has only enumerated a list of cases without mentioning that there were six cases in which the Petitioner was acquitted and, therefore, the basis of detention order was on incorrect material. It is also argued that the Petitioner was already in jail at the time when the impugned order was passed under the Act. Since he was already in detention, there was no occasion to detain him or there being any apprehension of disturbance of public order.

7. The third argument is that the District Magistrate has not examined all the materials and called for detailed report regarding the existence of an apprehension of danger to the public life. In fact, if the District Magistrate would have examined the cases, a list of which was appended with the report, it would have revealed that the cases pertain to individual person having personal grudge and, therefore, it was not an offence against the public at large. Thus it was a case of "law and order" but no disturbance of "public order" which entails imposition of an order of preventive detention.

8. The State counsel has filed his counter affidavit and made his submissions disputing each and every arguments of the learned senior Advocate Mr. Rajeeva Sharma. At the very outset, the learned Counsel submitted that though the Act provides the detenu an opportunity to challenge the order of detention by filing a representation. The provision under the Act for serving the detention order within a definite specified period is only with a view to afford an opportunity to make a representation which could be considered by the Advisory Board, but admittedly no such representation was made. A perusal of the confirmation order passed by the Advisory Board dated 30th July, 2011 (Annexure 2 to the counter affidavit) is vocal of the fact that though the detenu was present before the Advisory Board and he has stated that he has been falsely implicated in several cases but no representation was given by him. It is also stated that the order of approval as stands confirmed by the order of the Advisory Board dated 30th July, 2011 is not challenged by the Petitioner, therefore, there is no ground for interference in the

detention order imposing a detention for a period of twelve months.

9. While replying to the argument that the approval was granted beyond the prescribed period of twelve days, the State counsel has placed Annexure 1 to the counter affidavit which is an extract of the proceedings and noting in the file of the Home Department and the Special Officer, who approved the order on 5th July, 2011. Signature of the Chief Minister is also on the order-sheet, though the order was communicated on 16th July, 2011. The date of communication is not to be taken into consideration since the Act requires that the State Government should grant approval within twelve days.

10. Learned Counsel appearing on behalf of the Petitioner states that signature of the Chief Minister or even the officer concerned cannot regularise the approval unless the proper procedure was followed and the order of approval was liable to be passed in the name of the Governor, since it is the State Government which is required under the law to grant approval. The decision of the Apex Court cited above is specific in support of this argument that the prescribed procedure has not been followed.

11. Counsel appearing on behalf of the Respondents has submitted that perusal of the report preferred before the detaining authority, which is annexed with the writ petition itself is an ample proof of the fact that it was clearly mentioned that the witnesses are terrorised and threatened at the behest of the Petitioner and his muscle men. It is for this reason that the witnesses do not turn up and depose against the Petitioner. Besides, an element of terror is created openly by the Petitioner by use of fire arm and explosive substance. The report also shows that Dahu Yadav was sent to jail on 2nd May, 2011 but the situation will become worse after his release; the State counsel placed the concluding part of the report of the Superintendent of Police, Sahibganj in support of his contention that the detenu is in custody for a short period, and pointed out that Superintendent of Police has written that the witnesses are intimidated while in detention and the residents of the locality are terrorised. Therefore, by no stretch of imagination, the argument of the Petitioner is tenable that complete material was not available with the District Magistrate and there was an inappropriate application of mind and the conclusion arrived at is in a routine matter on the basis of list of criminal cases which relates to the period prior to 2009. Lastly, Mr. Rajeeva Sharma had laid emphasis on Article 166 of the Constitution of India-stressing on the conduct of business of the Government of a State and that the executive action of the State is to be taken in the name of the Governor.

12. Having heard the respective contentions, we proceed to examine the order of detention. Perusal of the impugned order denotes that the District Magistrate has clearly and unequivocally arrived at an opinion on the basis of the report and the list of cases that the Petitioner is involved in a number of incidents which has created an atmosphere of terror in the minds of the community at large. None of the member of the public dares to open their mouth. Seldom the witnesses come forward and dare to state a single word but they are subjected to consequence

which result in no evidence against the Petitioner. The satisfaction recorded by the District Magistrate is on the basis of a detailed police report which we have perused and assessed the argument of learned Counsel on behalf of the Petitioner, we are not at all impressed that there was no material before the detaining authority which is far from truth.

13. No doubt learned Counsel has cited a number of decisions of the Apex Court in *Bachhittar Singh Vs. The State of Punjab*, ; *Arun Ghosh Vs. State of West Bengal*, and *Smt. Bimla Dewan v. The Lieutenant Governor of Delhi* 1982 CRI L.J. 1737. We have perused the citations and scrutinised the factual aspects involved in all these case where the detenues were detained under the Preventive Detention Act. We are of the considered opinion that though the criminal history narrated in the police report-eleven cases are of the period 2009 and prior to it, but there are seven incidents related to the year 2011. In our view, the quantum of cases is not material. It is the quality of the offence and the person detained is whether liable to be prevented from looming large in the society. The well being of the general public and also with a view to prevent the peace of the community, the authorities had to adopt the measure of preventive detention. The very fact that the Petitioner has been acquitted in a number of cases is not sufficient to arrive at the conclusion that circumstances are such which calls for a preventive detention. Evidently the witnesses are not coming forward and thus it results in acquittal for want of evidence. Besides assuming that the result of six cases of acquittal has not been specifically mentioned in the police report even then the fact that the Superintendent of Police has stated very clearly the manner in which the Petitioner operates, he has a number of associates who are equally embolden on account of presence of the detenu. Thus the conclusion arrived at by the District Magistrate is apparently fully justified. We are not in agreement advanced on behalf of the Petitioner so far the question of subjective satisfaction, sufficiency of material before the detaining authority and insufficient material for imposing the order of detention. In the circumstances, it does not call for any interference by this Court in exercise of extra ordinary jurisdiction.

14. The argument regarding delay in grant of approval, we are convinced that the letter dated 16th July, 2011 is only a communication to the Petitioner the order of approval was passed on 5th July, 2011. The extract of the proceedings of the State Government annexed with the counter affidavit is sufficient to convince us that approval was within time. We are also not in agreement with the argument that the proper procedure was not followed in grant of approval. We have posed specific question to the learned senior counsel whether the Act provides for specific procedure, the reply was in negative. Perusal of the Act demonstrates that there is no specific procedure provided for grant of approval but the law has insured to avoid undue delay in approval of the order of detention of a citizen. A limited period for approval is admittedly provided under the Act. In the instant case, approval has been accorded on 5th July, 2011. There is no proper format provided for grant of approval, no specific procedure is provided. The extract of proceedings appended to the counter affidavit is

sufficient to substantiate that the material relating to the impugned order was placed before the Government and the seal of the authority was endorsed within time. We are not inclined to adopt a hyper technical view. The "Approval" was duly accorded. No doubt Article 166 of the Constitution provides that executive order should be in the name of the Governor but in the instant case, the grant of approval stands confirmed by the Advisory Board.

15. In the present case, the order of Advisory Board dated 30th July, 2011 (Annexure 2 to the counter affidavit) consisting of three members is absolutely clear. In fact, the Petitioner did not opt to offer an explanation by filing a representation which was a privilege granted under the Act, but obviously, no such representation was forthcoming. The only explanation given by the detenu that he is falsely implicated in several cases, but not a word has been mentioned regarding illegal detention or the fact that any one was biased since there is nothing on the record and the order of the Advisory Board which is the order of confirmation is absolutely valid. We are of the considered view that no illegality has been committed by the Respondents and the order of detention calls for no interference and the writ of habeas corpus is not maintainable as the detention is neither illegal nor unconstitutional. The right of liberty has been curtailed in the interest of public at large who also have an inherent right to live in peace. So far the other argument raised on behalf of the Petitioner is concerned, we are not in agreement and the order of detention, grant of Approval and final confirmation is absolutely just and legal. We conclude that since the public order and the peace of community at large is at stake, the authorities i.e the Respondents have exercised the extra ordinary right of detention under the Preventive Detention Act.

16. In the result, there is no merit in the writ petition and it is, accordingly, dismissed.