

(2007) 01 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 788 of 2006

Dharmendra Kumar @ Dharmendra Kumar Rai	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2), 19, 21
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 394, 414

Citation : (2007) PLJR 358

Hon'ble Judges : Narayan Roy, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Akhauri Kamal Kishore Sahay, learned counsel for the petitioner and Mr. Nawal Kishore Singh, learned Standing Counsel No. 6 for the respondents. At the outset it would be pertinent to mention here that this habeas corpus application was filed on 24.11.2006 after serving a copy of the same in the office of the Advocate General and thereafter the matter was listed for admission on 27.11.2006. On that date, on prayer made on behalf of the State counsel four weeks" time was granted to file counter affidavit, but till date no counter affidavit has been filed on behalf of the respondents.

2. This habeas corpus application is directed against the order of detention passed against the petitioner dated 13.2.2006 by the District Magistrate, Saran in exercise of power u/s 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter) to be referred to as "Act".

3. Counsel for the petitioner precisely submitted that the grounds on which the petitioner was detained basically relate to the question of law and order and in these cases, in no way, he disturbed the public order. It is further submitted that while the petitioner was in custody in Chapra (Town) Police Station Case No. 180/05 filed for offence u/s 395, the order of detention was served upon him,

but there is nothing on record to show that the District Magistrate (detaining authority), in any way, was satisfied that in case the petitioner will come out from jail custody, he will again indulged in antisocial activities prejudicial to maintenance of public order.

4. Counsel appearing on behalf of the State submitted firstly that pursuant to order dated 27.11.2006 he informed the District Magistrate, Saran, Superintendent of Police, Saran and Superintendent of Jail for instruction in the matter, but he could not receive any instruction from their end, and, therefore, counter affidavit could not be filed. Learned counsel, however, submits that the petitioner appears to be a habitual criminal and owing to his activities, as shown in the order of detention, he was a menace to the society and his criminal activities had disturbed the public tranquility. Learned counsel, in this view of the matter, submitted that no interference is required in the matter.

5. We have gone through the order of detention and the grounds of detention. It appears that the petitioner indulged in commission of crime repeatedly and in short span of time he was made an accused in Chapra (Town) Police station Case No. 225/04 dated 2.10.2004 for offence u/s 394 of the Indian Penal Code and subsequently charge sheet was filed and within eighteen days thereafter he again committed offence pertaining to Chapra (Mofussil) Police Station Case No. 348/04, where also charge sheet was filed. The petitioner thereafter again was made an accused for an offence u/s 414 of the Indian Penal Code and under the provisions of Arms Act in Chapra (Town) Police Station Case No. 180/04 dated 24.8.2004, and lastly he indulged in committing bank dacoity in broad day light and for that Chapra (Town) Police Station Case No. 180/05 dated 24.8.2005 was registered and subsequently, charge sheet was filed.

6. The Criminal activities of the petitioner, thus, appear to be in quick succession and one after another he committed the offences, as referred to above.

7. The detaining authority, in that view of the matter, just to prevent the petitioner from acting in any manner further prejudicial to maintenance of public order, detained him under the provisions of the Act on fully being satisfied that there was likelihood of the petitioner coming out on bail in a case of bank dacoity. The cases, which have been reported against the petitioner, and which have been made grounds appear to be very much germane to the issue and his activities, thus, appear to be prejudicial to maintenance of public order.

8. The order of detention passed by the District Magistrate, Saran, subsequently, was confirmed by the Advisory Board and subsequently approved by the State Government under sections 19 and 21 of the Act. The representation filed by the petitioner was also considered and disposed of by the State authorities.

9. Regard being had to the facts and circumstances of the case, we do not find any infirmity or illegality in the order of detention.

10. This application is, accordingly, dismissed.

11. Before we part with this order, we are tempted to say that in the detention matter like this, the respondent authorities would have promptly filed counter affidavits, for which necessary intimations are said to have been sent by the concerned Law Officer. The State counsel was directed to file counter affidavit vide order dated 27.11.2006 and even after lapse of two months counter affidavit has not been filed justifying the order of detention either by the District Magistrate or by the authorities of the Department of Home (Police).

12. In case, the detention order is challenged, the Court takes up the matter on priority basis, as it pertains to curtailment of the right of the detenu, as envisaged under Article 21 of the Constitution. The approach of the concerned authorities, in this view of the matter, is not appreciated. In many of such cases, we have seen that counter affidavits are not filed by the detaining authorities, i.e. the District Magistrates. Affidavits are coming by the respective Jail Superintendents and the Superintendents of Police.

13. The respondents authorities, particularly the concerned District Magistrates and the authorities of the Department of Home (Police) in future should be cautious in opposing such applications promptly by filing necessary affidavits. Let copies of this order be communicated to the Chief Secretary, and Home Secretary, Government of Bihar, for necessary information.