

(2015) 03 PAT CK 0044

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1088 of 2013

Dhirendra Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Penal Code, 1860 (IPC) — Section 120B, 399, 402, 411
Prisoners Act, 1900 — Section 29, 29 (3), 29(3)

Citation : (2015) 03 PAT CK 0044

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Sajid Salim Khan, for the Appellant; Sunil Kumar, AC to AAG,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Singh, J.—In this application filed under Articles 226 and 227 of the Constitution of India, the petitioner has made two prayers. The first prayer is to direct the respondents to produce Letter No. 3486 dated 11th July, 2013 issued by respondent No. 2, whereby in exercise of powers provided under Section 29(3) of the Prisoners Act, 1900 the petitioner has been ordered to be transferred from Sub-Jail, Birpur to Special Central Jail, Bhagalpur, and thereafter to quash the said order. The second prayer of the petitioner is to quash Letter No. 270 dated 12th July, 2013 issued by respondent No. 3 directing transfer of the petitioner from Sub-Jail, Birpur to Special Central Jail, Bhagalpur.

2. It has been contended that the petitioner is an under-trial prisoner. He was arrested in connection with Birpur P.S. Case No. 169 of 2013 registered under Sections 399, 402, 411, 416A and 120B of the Indian Penal Code. In connection with the aforesaid case, he was arrested on 1st July, 2013 and on the same day he was remanded to judicial custody till 15th July, 2013 and sent to Sub-Jail, Birpur. Besides the above said case, the petitioner has also been made accused

in Raghapur P.S. Case No. 14 of 2004, Raghapur P.S. Case No. 27 of 2004 and Birpur P.S. Case No. 104 of 2006. All the abovementioned cases are registered in the district of Supaul and, in all the cases, after conclusion of investigation charge sheet has been submitted. All the above said cases are pending for trial and disposal before different courts of Supaul District. On 12th July, 2013 respondent No. 3 filed a petition before the learned Sub-Divisional Judicial Magistrate, Birpur for transfer of the petitioner to Special Central Jail, Bhagalpur on the direction of respondent No. 2. The reason given for seeking transfer was related to security of the petitioner in Sub-Jail, Birpur. On the same day i.e. on 12th July, 2013 itself learned Sub-Divisional Judicial Magistrate allowed the application of transfer of the petitioner to Special Central Jail, Bhagalpur on the condition that the petitioner should be produced in the said court on the next appointed day.

3. It has been contended that after being transferred to Special Central Jail, Bhagalpur, the petitioner is not being produced by the respondents in the courts where his trials are pending and due to non-production of the petitioner by the respondents, the trials are being delayed for no fault on the part of the petitioner. It has been submitted that the impugned action on the part of the respondents is violative of right to speedy trial guaranteed under Article 21 of the Constitution of India.

4. Pursuant to the direction of this Court, the respondents have brought on record the order bearing memo No. 3486 dated 11th July, 2013 issued by respondent No. 2. A perusal of the same would reflect that the petitioner is a dreaded criminal of kosi region. He had managed to escape along with some other co-prisoners from prison in Nepal on 8th November, 2012 and after lot of efforts made by the police, he could be arrested on 13th June, 2013 in India. The District Magistrate and the Superintendent of Police, Supaul had made a joint recommendation that his confinement in prison at Sub-Jail, Birpur was against the public interest due to lack of adequate security. They had recommended for his transfer from Sub-Jail, Birpur to Special Central Jail, Bhagalpur due to administrative reason. Taking into consideration the recommendation made by the District Magistrate and the Superintendent of Police, Supaul, the Inspector General, Prison and Reform Services, Bihar Patna vide his order, as contained in memo No. 3486 dated 11th July, 2013, directed to transfer the petitioner from Sub-Jail, Birpur to Special Central Jail, Bhagalpur in exercise of power conferred under Section 29 (3) of the Prisoners Act, 1900.

5. Learned counsel for the State has submitted that due process of law was followed while transferring the petitioner from Sub-Jail, Birpur to Special Central Jail, Bhagalpur and necessary order in this regard was also obtained from the court of competent jurisdiction. He has further submitted that the petitioner has been made accused in not less than 33 cases of serious nature. He has submitted that the petitioner is a gangster and has link with international criminals. His confinement in Sub-Jail, Birpur would neither be in his own interest

nor in the interest of administration as there is lack of adequate security at the Sub-Jail level. He has contended that the petitioner is being regularly produced before the court and it is not true that because of his confinement at Special Central Jail, Bhagalpur, his trial is being delayed.

6. Having heard the parties, I think it appropriate to take note of Section 29(3) of the Prisoners Act, 1900, which has been added after sub-section (2) of section 29 of the said Act, vide Bihar Act 1, 2004, which reads as under:--

"(3) Subject to the orders, and under the control, of the State Government any person who is detained in custody in a prison due to pending inquiry, investigation or trial under any writ, warrant or order of any Court may, by order, be directed to be removed---

(a) from one subsidiary Jail to another subsidiary Jail or district jail in the district, by the District Magistrate;

(b) from one district Jail to another subsidiary Jail in the district, by the District Magistrate;

(c) from a subsidiary Jail or a district Jail in one district to a subsidiary Jail or a district Jail in another district, by the District Magistrate of the District from which the person is removed with the consent of the District Magistrate of such other district;

(d) by the State Government or the Inspector General of Prisons:---

(i) from one Central Jail to another Central Jail or to a District Jail or a subsidiary Jail;

(ii) from one district Jail to another district Jail or a Central Jail or a subsidiary Jail; or

(iii) from one subsidiary Jail to another subsidiary Jail or to a district Jail or a Central Jail."

7. On a bare perusal of the provision as prescribed under Section 29(3) (Supra), it would appear that a person detained in custody in a prison due to pending enquiry, investigation or trial can be transferred from one subsidiary Jail to another subsidiary Jail or to a district Jail or a central Jail by an order passed by the State Government or Inspector General of Prisons. It is an admitted fact that the petitioner has been made accused in several cases of serious nature spread over several districts. If the administrative authorities feel threat to the life of the petitioner at Sub-Jail, Birpur as also threat to the security of Birpur Sub-Jail if the petitioner is lodged there, his transfer in terms of sub-section (3) of Section 29 (Supra) is permissible in law. As noted above, petitioner has been transferred from Sub-Jail, Birpur to Special Central Jail, Bhagalpur after obtaining permission from the competent court in which his trial was going on. The impugned action on the part of the respondents is neither illegal nor arbitrary nor without jurisdiction.

8. In view of the above, I find no merit in this application. Accordingly, the application is dismissed.