

(2020) 06 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 359 Of 2019

Firoz Khan And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Jharkhand Control of Crimes Act, 2002 — Section 12(2), 21(1), 22

Indian Penal Code, 1860 — Section 34, 143, 323, 341, 386, 387, 414, 448, 504, 506

Citation : (2020) 06 JH CK 0032

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : A.K.Kashyap, Navin Kr. Singh

Final Decision : Allowed

Judgement

1. This interlocutory application has been filed for amendment in the prayer portion, incorporating a challenge to the order of detention dated 17.03.2020. By virtue of the aforesaid order the detention of the petitioners has been extended till 27.06.2020.

2. Counsel for the petitioners submits that since this order was passed during pendency of this writ application and the State, time to time has extended the order of detention, it is necessary to quash the aforesaid order. He submits that on earlier occasions, similar extension order was challenged through interlocutory applications and the same was allowed. He further submits that if this interlocutory application is not allowed the entire writ application will become infructuous and will also lead to multiplicity of proceedings.

3. Counsel for the State has no serious objection in incorporation of the prayer.

4. Considering the submission of the parties, I find that the period of detention of the petitioners has been extended by the order dated 17.03.2020 till 27.06.2020. This order was passed during pendency of this writ application.

5. Considering the fact that the extension of the detention order was passed during pendency of this writ application and the prayer made in this application is with regard to challenge the order of detention, I am inclined to allow this interlocutory application. Accordingly, this interlocutory application is allowed and the order dated 17.03.2020 will be treated to be an impugned order alongwith the other orders.

6. I.A. No. 3122 of 2020 stands allowed.

W.P. (Cr.) No. 359 of 2019

1. The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10.30 A.M. They have no complaint in respect to the audio and video clarity and quality.

2. Heard learned counsel for the petitioner and learned A.P.P. for the State.

3. In this writ application, the petitioners have prayed for quashing the order dated 27.06.2019, passed by the District Magistrate, Ranchi, whereby and whereunder, the petitioners were put under preventive detention under Jharkhand Control of Crimes Act. Further, the order dated 09.08.2019, passed under Section 21 (1) and 22 of the Jharkhand Control of Crimes Act, is under challenge by which the Government of Jharkhand has confirmed the order dated 27.06.2019. Further, the order dated 16.09.2019, is also under challenge by which the Government has extended the period of preventive detention for a further period of three months.

4. By way of amendment, the order dated 06.12.2019 has also been challenged by which the detention period was further extended for a period of three months, i.e. from 27.12.2019 to 27.03.2020. Again by way of amendment, the petitioner has sought to quash the order dated 17.03.2020, by which the detention period was further extended till 27.06.2020.

5. By virtue of the order dated 27.06.2019, passed by respondent no. 3, i.e. the District Magistrate, Ranchi, the petitioners have been put under preventive detention in terms of Section 12(2) of the Jharkhand Control of Crimes Act (herein after referred to be as Act). This detention order was passed on the recommendation of the Dy. Superintendent of Police, which was made vide letter dated 22.06.2019. The order dated 27.06.2019, has been brought on record as Annexure-3 & 3/1 to this writ application, in respect of the respective petitioners.

6. So far as petitioner no.1 namely Firoj Khan is concerned, it has been mentioned that he is a dreaded criminal and he is in custody in connection with Khelari P.S. Case No. 40 of 2019, registered for the offence under Sections 386, 387, 414/34 of the Indian Penal Code. The other criminal cases, which are registered against this petitioner, are (i) Kehlari P.S. Case No. 18 of 2001, registered under Sections 143, 341, 323, 387 of the Indian Penal Code; (ii) Kehlari P.S. Case No. 19 of 2012, registered under Sections 448, 504, 506, 323/34 of the Indian Penal Code. It has been further mentioned that there are

three non-FIR (Sanha) against this petitioner, which have been numbered as Khelari non-FIR Nos. 23 of 2019, 25 of 2019 and 8 of 2019.

7. Similarly, in respect of petitioner no. 2 namely, Minhaz Alam, it has been mentioned that he is also an accused alongwith petitioner no. 1 in connection with Kehlari P.S. Case No. 40 of 2019, registered under Sections 386, 387, 414/34 of the Indian Penal Code. He is also an accused in Makluskiganj P.S. Case No. 25 of 2015. Further, non-FIR (Sanha) being Case Nos. 23 of 2019, 25 of 2019 & 8 of 2019, have also been registered against this petitioner in Khelari Police Station.

8. The District Magistrate, Ranchi, has passed an order to detain the petitioners for a maximum period of 12 months. The grounds for detention were furnished to the petitioners. The petitioners filed their representation, but according to the petitioners, they received no information on their representations. The Advisory Board considered the case of the petitioners and also gave a personal hearing and, thereafter, approved the detention order. On 09.08.2019, the government confirmed the detention order and directed that the petitioners be detained for three months, i.e. till 27.09.2019. On 16.09.2019, the respondent further extended the order of detention for another period of three months on the recommendation of the District Magistrate, i.e. from 27.09.2019 to 27.12.2019. Again, on 06.12.2019, the detention period was further extended on the recommendation of the District Magistrate till 27.03.2020. Lastly, again the detention period of these petitioners was extended for another period of three months, i.e. till 27.06.2020.

9. Aggrieved by the initial order of detention and also by the subsequent orders of extension, the petitioners have approached this Court by filing this writ application.

10. Learned senior counsel for the petitioners submits that there was violation of the provisions of the Act and no information was given to the petitioner in relation to their representations. He submits that they were not even informed as to whether their representations were disposed of or not. He submits that as per law, their representations were liable to be disposed of within a reasonable period but that not being done and the provision of law has been violated. The entire detention orders need to be said aside on this ground. He submits that the grounds for detention cannot be sustained as on the basis of non-FIR/Sanha the petitioners have been detained. He submits that the FIRs, which have been relied upon, are of the year 2001 and 2012, so far as petitioner no. 1 is concerned, which cannot be said to be within the proximity of the order of detention passed and that being so, the sole FIR, which is of the year 2019, cannot be a basis for detaining petitioner no.1. So far as petitioner no. 2 is concerned, it has been submitted that one case, which has been referred to is of the year 2015 and another is of the year 2019. It is submitted that the FIR of the year 2015 cannot be a basis for detaining the petitioner in the year 2019. It is also submitted that the other information having not been culminated in any FIR, the petitioners so

could not have been detained. He further submits that the orders of extension are absolutely bad as no ground has been mentioned as to why it is necessary to extend the detention order. He submits that the Government without recording satisfaction that it is necessary to extend the period of detention, could not have been extended the same. He further submit that the orders by which the period of detention have been extended do not reflect any satisfaction as envisaged in proviso to Section 12(2) of the aforesaid Act. This renders the impugned order bad in law.

11. Counsel appearing on behalf of the State submits that the District Magistrate recommended the detention of the petitioners for a period of 12 months. He submits that the Act provides that at the first instance the detention cannot be for more than three months but the same can be extended. Thus, the Government extended the period of detention in terms of Section 12 of the Act for which no fault can be found. He further submits that it is not necessary that the order communicated to the petitioners will reflect satisfaction. Whether there is any satisfaction or not, would be apparent from the file itself where the decision is taken. The impugned orders, which have been placed on record, are nothing but a mere communication and it is not necessary to reflect the satisfaction in any communication. He submits that there are sufficient grounds to detain the petitioners, which are apparent from Annexure-3 series. He submits that these petitioners are dreaded criminals and thus a decision was taken to detain the petitioners and extend the period of their detention from time to time.

12. I have heard the counsel for the parties and gone through the entire records. This Court had directed the State to produce the entire file in relation to the detention of the petitioners. The entire file, in a sealed cover, has been produced. I have gone through the same also. The initial period of detention was for three months. It is pertinent to mention here that the power of detention in terms of Section 12 of the Act, provides that at the first instance the period of detention cannot exceed three months, but the State Government, if satisfied that it is necessary to extend, may amend the said order to extend the period from time to time by any period not exceeding three months at any one time. It is necessary to quote Section 12 (2) of the Act, which is quoted herein below:-

"12. Power to make order detaining certain persons.-(1)..... (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the powers conferred upon by the said sub-section. Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

13. From the file, I find that the initial period of detention was for three months, i.e. from 27.06.2019 to 27.09.2019. The same was extended to 27.12.2019, i.e. for a period of three months. Again the same was extended from 27.12.2019 to 27.03.2020. Lastly, it was extended from 27.03.2020 to 27.06.2020. Thus, from the aforesaid facts, it is clear that the petitioners have already remained in detention for the two extended period. The 3rd extension period is in force.

14. Now, for all practical purposes, it is to be seen whether there was any satisfaction of the State Government for extending the period till 27.06.2020. When I go through the entire file, I find that on 04.12.2019 the Hon'ble Chief Minister has approved the extension of detention from 27.12.2019 to 27.03.2020. I have gone through the office note also. Office note suggests that a recommendation was received from the District Magistrate for extending the period of detention. It has been mentioned in the note that the District Magistrate has mentioned in his letter that if these petitioners are released from detention, it will have a negative impact on the public order and in the law and order situation. It has been mentioned that keeping in view of the criminal mentality of the petitioners, it is necessary to extend the period of detention. The said note was addressed to the Additional Chief Secretary. In the said note in the last line, it has been mentioned that the proposal can be approved. Thereafter, I find from the departmental file that the Additional Chief Secretary had put in his signature on 28.11.2019 and, thereafter, the Hon'ble Chief Minister on 04.12.2019, without making any comment. On the basis of the aforesaid decision, petitioners' detention was extended from 27.12.2019 to 27.03.2020.

15. Similarly, in respect of 3rd extension, the proposal was sent on 05.03.2020 to the Additional Chief Secretary. When I read the last proposal, I find that the proposal which was earlier sent for extending the period of detention for the second time, i.e. 27.12.2019 to 27.03.2020 and the last one is verbatim the same. The only difference is that in the tabular chart showing the earlier periods of detention an extra column has been added under the heading 3rd and final extension period. Save and except that extra column, other words in both the proposal are same. It can be said that it is nothing but a "cut, copy, paste" of the earlier proposal. The Additional Chief Secretary signed on 06.03.2020 and the Hon'ble Chief Minister on 12.03.2020, again without any comment. The proposal, which was forwarded by the District Magistrate and prepared by one Assistant Section Officer, was purportedly approved by the Additional Chief Secretary. I find that both, i.e. the Additional Chief Secretary and the Hon'ble Chief Minister have not made a single comment on it. Satisfaction as envisaged in the proviso of Section 12 is not that of District Magistrate or that of the Assistant Section Officer. The District Magistrate or even the Assistant Section Officer or even the Additional Chief Secretary cannot be said to be the State Government for this purpose. There has to be a satisfaction of the Minister of the Department and in this case, who is the Hon'ble Chief Minister himself. I find from the record that this satisfaction is lacking.

16. In absence of the requisite satisfaction as envisaged in proviso to Section 12 (2) of the Act, which is mandatory, extension orders cannot be allowed to sustain. Since the period of earlier extension is already over, I am not commenting on that. So far as the present period of extension, which is continuing vide order dated 17.03.2020, I find that the same is without any satisfaction and has been passed in a most mechanical manner. Thus, I am inclined to set aside the order dated 17.03.2020. Accordingly, the order dated 17.03.2020, by which period of detention of the petitioners has been extended from 27.03.2020 to 27.06.2020, is hereby set aside. The petitioners are directed to be released forthwith.

17. This writ application stands disposed of on the basis of the observation made above.

18. The original records, which have been sent in sealed cover, be again sealed by the Registry and be handed over in the office of Advocate General or in the office of S.C.-VII.

9. Let this order be communicated to the District Magistrate-cum- Deputy Commissioner, Ranchi immediately through FAX.