
(2015) 10 PAT CK 0081
In the Patna High Court
Case No : Criminal WJC No. 747 of 2015

Fulo Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(1), 12(2), 12(3), 17, 18
Constitution of India, 1950 — Article 22(5)
Penal Code, 1860 (IPC) — Section 392, 395

Citation : (2015) 4 PLJR 736

Hon'ble Judges : Ramesh Kumar Datta and Sudhir Singh, JJ.

Bench : Division Bench

Advocate : Shekhar Kumar Singh and Pankaj Kumar Jha, for the Appellant;
Anshuman Singh and Sriram Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. This writ application has been preferred against the order dated 19.1.2015 issued under the signature of the Under Secretary. Home (Police) Department, Government of Bihar, Patna, (Annexure-2), by which in exercise of power conferred under Sections 21(1) and 22 of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as "the Act") the detention order bearing Memo No. 2223-2/Vidhi, dated 30.11.2014, passed by the District Magistrate, Saharsa, in exercise of power conferred under Section 12(2) of the Act, has been confirmed and the direction for detention of the petitioner till 29.11.2015, has been passed.

2. The contention of the petitioner is that he is in judicial custody since 31.7.2015 in connection with Sourbazar P.S. Case No. 344/2014, instituted for the offence under Section 392 of the Indian Penal Code and later on Section 395 I.P.C. has also been added. In the meantime the District Magistrate, Saharsa, respondent No. 3, in exercise of power under Section 12(2) of the Act, passed the detention order in respect of the petitioner vide order dated 30.11.2014.

Thereafter, the District Magistrate, Saharsa, made report, about the order dated 30.11.2014 to the State Government together with the grounds, for approval, whereupon the State Government vide order dated 19.1.2015 confirmed the said detention order dated 30.11.2014 of the District Magistrate, Saharsa and directed for detention of the petitioner till 29.11.2015. The further contention of the petitioner is that he had not made any attempt to get bail and the representation of the petitioner was rejected by the respondent authorities without reasonable explanation as well as application of mind and communication regarding rejection of the representation was made after much delay, which is in violation of Article 22(5) of the Constitution of India.

3. A counter-affidavit has been filed on behalf of the respondent No. 1 contending therein that the petitioner being an anti-social element and habitual offender, was expected to be released on bail on the date when the Superintendent of Police, Saharsa, made recommendation to the District Magistrate, Saharsa, for preventive detention of the petitioner which necessitated the respondents to detain the petitioner with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The detention order in respect of the petitioner dated 30.11.2014 passed by the District Magistrate, Saharsa, was approved by the State Government under Section 12(3) of the Act within the statutory period of 12 days vide Home (Police) Department Order No. 10210 dated 11.12.2014, thereafter the matter was referred to the Advisory Board of the Hon"ble High Court, Patna. The representation of the petitioner addressed to the Under Secretary, Home (Police) Department, Government of Bihar, against the order dated 30.11.2014 was received on 22.12.2014. The said representation was thoroughly examined by the State Government and after approval of the Hon"ble Chief Minister, Bihar, on 31.12.2014, the representation of the petitioner was rejected, vide Home (Police) Department, Memo No. 18 dated 2.1.2015 and it was communicated on the same date. The opinion of the Advisory Board was received on 12.1.2015 and the State Government confirmed the aforesaid detention order with a direction that the petitioner will be detained till 29.11.2015.

4. The respondent No. 4 has also filed counter-affidavit in the matter, contending therein that the petitioner was making efforts for release on bail, when the Superintendent of Police, Saharsa, made report to the District Magistrate, Saharsa, in respect of detention of the petitioner and there was likelihood of release of the petitioner, who is an antisocial element in terms of Section 2(d) .

5. It is further contended that the petitioner was given sufficient opportunity and he was intimated so as to seek legal aid, if necessary, through the Jail Superintendent, Saharsa. On receipt of copy of the representation made by the petitioner to the Under Secretary, Home (Police) Department, Bihar, Patna, the District Magistrate, Saharsa, asked reply from the Superintendent of Police, Saharsa, and thereafter the State Government confirmed the order exercising power conferred under Section 21(1) of the Act.

6. The learned counsel for the petitioner submits that the petitioner is not an anti-social element and representation of the petitioner has not been considered by the concerned respondent. He further submits that the representation of the petitioner was rejected vide order dated 2.1.2015 without reasonable explanation and communication of the order was made after much delay. He further submits that there was no likelihood of release of the petitioner, when the District Magistrate, Saharsa, passed the detention order dated 30.11.2014.

7. The learned counsel for the petitioner has placed reliance on the judgments of this Court, reported in Sahdeo Rai Vs. The State of Bihar and Others--> and Binod Choudhary Vs. State of Bihar and Others, , in support of his contention as mentioned above.

8. The counsel for the respondents on the other hand submits that the grounds for detention was served upon the petitioner on 14.12.2014 by the Jail Superintendent, Saharsa, thus the petitioner was given sufficient opportunity and he was also intimated to seek legal aid, if necessary. The representation of the petitioner was duly considered and the order of detention passed against the petitioner by the District Magistrate, Saharsa, was confirmed by the State Government on the basis of opinion of the Advisory Board of this Court and order under challenge does not suffer from non-application of mind and the same is not violative to Article 22(5) of the Constitution of India.

9. Now, the points which arise for consideration of this Court are: whether the detention order dated 30.11.2014 passed by the District Magistrate, Saharsa, in exercise of power conferred under Section 12(1) was required to be passed and whether the order under challenge dated 19.1.2015 passed under the signature of the Under Secretary, Home (Police) Department, Government of Bihar, Patna, confirming the said detention order in respect of the petitioner, is a valid order.

10. We may notice here the relevant provisions of the Act, which read thus:--

"12. Power to make order detaining certain persons.--(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements cannot be prevented otherwise than by the immediate arrest of such person, make an order directing that such antisocial element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limit of the jurisdiction of the 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 power 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.

(3) When any order is made by the District Magistrate, he shall forthwith report, the fact to the State Government together with the grounds on which the order has been made and such other particular as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than 12 days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under Section 17 the grounds of detention are communicated by the officer making the order after 05 days but not later than 10 days from the date of detention, this sub-section shall apply subject to the modification that, for the words "12 days" the words "15 days" shall be substituted."

11. We may further notice the provision contained in Section 21 of the Act, which reads thus:--

"21. Action upon the report of the Advisory Board.--(1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the government may confine the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for detention of a person, the government shall revoke the detention order and cause the person concerned to be released forthwith.

12. We may also notice the provision contained in Section 22 of the Act, which reads thus:--

22. Maximum period of detention.--The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 21 shall be 12 months from the date of detention:

Provided that nothing contained in this Section shall affect the power of the government to revoke or modify the detention order at any earlier time.

13. After considering the rival contentions of the parties and materials available on record, we find that the Superintendent of Police, Saharsa, vide Letter No. 6080/C.R./dated 22.11.2014 made report to the District Magistrate, Saharsa, that the petitioner being an active and veteran criminal of the locality and he would create atmosphere of fear and terror and having criminal antecedent of as many as 18 cases besides Sourbazar P.S. Case No. 218/2014, thus made recommendation for preventive detention of the petitioner. Thereupon, considering the report of the Superintendent of Police, Saharsa, the District Magistrate reached the conclusion that the petitioner is an anti-social element and has created atmosphere of fear and terror among the general people and

finding no alternative than preventive detention of the petitioner under the Act passed the detention order dated 30.11.2014 in Cr. Misc. No. 145/2014 and forthwith made report to the State Government together with the grounds on which the order has been made, for approval by the State Government. Thereafter, the State Government vide orders dated 11.12.2014 made approval of the detention order passed in respect of the petitioner in exercise of power conferred under Section 12(3) of the Act, within the statutory period and it was indicated in the order dated 11.12.2014 as referred above that if the detune, so desires, may make his representation to the Home (Police) Department, Bihar, Patna, through the Jail Superintendent, Saharsa. On the representation of the petitioner, the Jail Superintendent, Saharsa, transmitted the same to the Under Secretary, Home (Police) Department, Government of Bihar, Patna, whereupon the District Magistrate, Saharsa, was asked to give his finding on the representation of the petitioner vide orders dated 22.12.2014 and 26.12.2014. The District Magistrate, Saharsa, asked the Superintendent of Police, Saharsa, vide letter dated 8.1.2005 to give para-wise reply in respect of the representation of the petitioner. The State Government after thorough consideration, rejected the representation of the petitioner vide order dated 2.1.2015. Thereafter, the matter was referred to the Advisory Board constituted under Section 18 of the Act, whereupon it was opined by the Advisory Board that there was sufficient ground for the detention of the petitioner. On the basis of opinion of the Advisory Board the State Government confirmed the order of detention and gave direction to detain the petitioner till 29.11.2015, vide order dated 19.1.2015, which is the order under challenge.

14. That this fact is not in dispute that the petitioner had moved for grant of bail before the learned 2nd Additional District & Sessions Judge. Saharsa in connection with Sourbazar P.S. Case No. 344/2014, when the Superintendent of Police, Saharsa, made recommendation vide letter bearing No. 6080/C.R./dated 22.11.2014 to the District Magistrate, Saharsa. Since the petitioner was making effort for grant of bail, thus there was likelihood of release of the petitioner, by the time when the Superintendent of Police, Saharsa, made recommendation for detention of the petitioner under the Act and the District Magistrate, Saharsa, passed the detention order in exercise of power under Section 12(2) of the Act. So far the plea of the petitioner that his bail application had been rejected vide order dated 24.11.2014 by the learned 2nd Additional District & Sessions Judge, Saharsa, it was never taken by the petitioner while making his representation dated 21.12.2014 before the Under Secretary, Home (Police) Department, Bihar, Patna. It also appears that the petitioner never brought the said fact regarding rejection of his bail application, to the notice of the respondent authorities, at any stage of the proceeding.

15. That the judgments referred and relied by the learned counsel for the petitioner are not applicable in the facts and circumstances of the case.

16. Thus we find no substance in the submission of the learned counsel for the

petitioner that the representation of the petitioner was not considered and the same was rejected without reasonable explanation and the detention order being passed in violation of Article 22(5) of the Constitution of India.

17. In view of the foregoing discussions, we are of the considered opinion that the impugned order dated 19.1.2015 (Annexure-2) passed under the signature of the Under Secretary, Home (Police) Department, Bihar, Patna, requires no interference.

18. As a result, this writ application is dismissed. However, there would be no order as to costs.

Ramesh Kumar Datta, J.

I agree.