

(2007) 02 PAT CK 0004
In the Patna High Court
Case No : Cr.WJC No. 729 of 2006

Golden Yadav @ Ajay Kumar	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2)

Citation : (2007) 2 PLJR 751

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Advocate : Sangeet Deokuliar, for the Appellant; Harendra Pd. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. Sangeet Deokuliar, learned counsel for the petitioner and Mr. Harendra Prasad Singh, learned G.A. 6 for the State. This writ application arises out of the order passed by the District Magistrate, Patna, in exercise of his power u/s 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter to be referred to as the "Act").
2. Learned counsel appearing on behalf of the petitioner assails the order impugned only on the ground that there had been abnormal delay in disposal of the representation filed by the petitioner as required under the Act and it would appear to be a case of unexplained delay and, therefore, the order impugned vitiates on this ground alone.
3. The question raised by the learned counsel for the petitioner, therefore, shall be considered in the light of the counter affidavit filed on behalf of the respondents, particularly pertaining to disposal of his representation.
4. From the counter affidavit filed on behalf of respondent nos. 1 and 2, namely State of Bihar and Home (Police) Department, it would be manifestly clear that the petitioner's representation dated 31.7.2006 was received in the Department

of Home (Police) on 1.8.2006 and vide Home (Police) Department letter no. 8523 dated 4.8.2006 the same was sent to the District Magistrate for necessary comments. The representation thereafter was thoroughly examined by the State Government at different levels. It was examined at the level of Deputy Secretary of the Department, Govt. of Bihar on 12.8.2006 and thereafter by the Home Secretary on 14.8.2006 and ultimately it was rejected by the Chief Minister on 17.8.2006.

5. A counter affidavit has also been filed on behalf of the detaining authority, the District Magistrate, Patna, but his affidavit is not worth consideration as he has not dealt with unexplained delay in disposal of the representation.

6. So far as other grounds are concerned, we need not go into the details in view of submissions of learned counsel for the petitioner.

7. From the counter affidavit filed on behalf of the Home (Police) Department, particularly with reference to paragraph 7 of the counter affidavit, it appears that at first count there was some delay in dispatch of the representation to the District Magistrate for necessary comments. That delay has not been explained satisfactorily as to why the representation which was received on 1st August, 2006 was dispatched on 4.8.2006 to the office of the District Magistrate. Again in second count delay in disposal of the representation has not been explained after 4.8.2006 to 12.8.2006.

8. From the counter affidavit of the District Magistrate it would appear that the representation was received in the office on 5.8.2006 still then there is unexplained delay of about seven days in disposal of the representation filed by the petitioner.

9. Learned G.A.VI, however, submits that there appears to be some unexplained delay in disposal of the representation, but owing to the activities of the petitioner which appear to be prejudicial to maintenance of public order, this application is liable to be dismissed.

10. Delay in disposal of the representation goes to the root of the case and it vitiates the detention in view of the mandates of the Act. The representation, if filed, by a detenu must be disposed of with all promptitude and in case certain delays are caused that should be satisfactorily explained.

11. In this connection reference may be made to the cases of Rajammal vs. State of Tamil Nadu (AIR 1999 S.C. 685) and Umesh Singh Vs. State of Bihar and Others .

12. In view of the discussions aforementioned, we find some force in submissions of learned counsel for the petitioner and, in that view of the matter, the order impugned is not sustainable in law only on the ground of unexplained delay in disposal of the representation of the detenu. In the result this writ application is allowed, the order of detention passed against the petitioner is set aside and the petitioner is directed to be set at liberty forthwith, if not required in any other

case.