

(2012) 04 JH CK 0151

In the Jharkhand High Court

Case No : Writ Petition (Habeas Corpus) (DB) No. 47 of 2012

Harish Kumar Singh @ Chhotu Singh

APPELLANT

Vs

The State of Jharkhand and Qrs.

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Jharkhand Control of Crimes Act, 2002 — Section 12A

Citation : (2012) 4 JLJR 449

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : Indrajit Sinha and P.A.S. Pati, for the Appellant; Vishal Kumar Trivedi, J.C. to S.C. III for the State, for the Respondent

Judgement

1. In this writ of Habeas Corpus, the petitioner has impugned the orders of preventive detention passed against him under the Jharkhand Control of Crimes Act 2000 ("Act" in short) dated 05.11.2011 and the subsequent orders of approval. Mr. Indrajit Sinha, learned counsel appearing for the petitioner challenged the said orders on the following grounds:

(a) The concerned authorities did not apply their mind while passing the said orders, in as much as, the bail granted to the petitioner, in some of the cases, were not taken into account. For this, he relied on Paragraphs 9 and 10 of the judgment reported in Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Others, .

(b) There was no likelihood of release of the petitioner on bail in the criminal cases, and therefore, the order of detention was unwarranted. For this, he relied on Paragraphs 22 to 27 of the judgment reported in Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another, .

(c) Out of 8 criminal cases, petitioner has been convicted in two and six are pending, but on the ground that the witnesses can be influenced by the petitioner, the detention order could not be passed. For this, he relied on

Paragraph 38 of the judgment reported in Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, .

2. On the other hand, learned counsel for the State supported the impugned orders. He also relied on Section 12A of the Act. He also submitted that whether bail was granted, in one or other case, was not relevant. He further submitted that the chance of influencing witnesses is not the sole ground. There was likelihood for release of the petitioner on bail. He was granted bail in other cases and in one case, his prayer for bail was rejected by learned District Judge, and then, petitioner was expected to move this Court, which he did and was granted bail by this Court. He was also granted bail in the appeals against conviction. The judgments relied by petitioner are not applicable to the facts and circumstances of this case. Therefore, it was submitted that this Court should not interfere with the subjective satisfaction of the authorities, as they have acted in public interest.

3. In our opinion, the impugned orders do not warrant interference.

4. In the case of Rushikesh Tanaji Bhoite (*supra*), it appears that the petitioner in that case was granted bail in the case, which was said to be the only case in proximity to the detention order. In that circumstances, it was *inter alia* observed that such order of bail must have been placed before the detaining authority, which is not the position in the present case. Thus, in our opinion, this case is of no help to the petitioner.

5. In the case of Pebam Ningol Mikoi Devi (*supra*), it was observed that - the prosecution would not be in a position to procure evidence to sustain conviction, cannot be a ground to pass an order of preventive detention. But in the present case, that is not the sole ground. From the materials available on record and from the impugned orders, it appears that there were other grounds also for the subjective satisfaction of the concerned authorities, such as serious threat to public order, if petitioner is released from jail. Thus, in our opinion, this case is also of no help to the petitioner, specially in view of Section 12A of the Act.

6. In the case of Rekha (*supra*), it was observed that where a detention order is served on a person already in jail, there should be real possibility of release of that person on bail, provided that he has moved a bail application, which is pending, and therefore, if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and therefore, the detention order would be illegal. But in the present case, it appears that petitioner was granted bail in all the cases, except one case, in which, bail was rejected by learned District Judge at the time of passing the order of detention. The concerned authorities were justified in apprehending that the petitioner may move against such rejection and he could be granted bail by this Court; and in fact, he moved and was granted bail by this Court. In our opinion, this case is also not applicable in this case.

7. Moreover, even the Supreme Court has said that it's judgments are not to be read as statutes as they are given in the fact situation obtaining in a particular

case.

8. After hearing the parties at length and carefully going through the materials on record, it appears that there were good grounds for the concerned authorities to be satisfied for passing the impugned orders. It is settled position that the subjective satisfaction of the authorities cannot be examined by this Court under writ jurisdiction. In the result, this writ of Habeas Corpus is dismissed.