
(2009) 07 JH CK 0090

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 325 of 2008

Harpal Singh @ Heere

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Arms Act, 1959 — Section 27
Jharkhand Control of Crimes Act, 2002 — Section 12, 12(2), 12(3), 12A, 2
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 07 JH CK 0090

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : A.K. Sinha, for the Appellant; R.K. Singh, G.P. IV, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The petitioner on being convicted for the offence u/s 302/34 of the Indian Penal Code and also u/s 27 of the Arms Act in Golmuri P.S. case No. 157 of 2006 while was serving sentence, was served with an order as contained in memo No. 1298 dated 12.6.2008 (Annexure 7) putting the petitioner under detention for one year in terms of the provision as contained in Section 12(2) of the Jharkhand Control of Crimes Act, 2002 (hereinafter referred to as the Act). The said order of detention was approved by the State Government, vide its order as contained in memo No. 2948 dated 24.6.2008 (Annexure 8) in terms of Section 12(3) of the Act. Thereupon the petitioner made representation before the State Government, which was rejected, vide its order as contained in memo No. 1456 dated 11.7.2008 (Annexure 9). Subsequently, case of the petitioner was placed before the Advisory Board which approved the order by holding that sufficient ground is there for passing the order of preventive detention. Thereupon the order of preventive detention was affirmed by the State Government, vide its order as contained in memo No. 4023 dated 1.10.2008 (Annexure 10).

2. Being aggrieved with the said order, this writ application has been filed on behalf of the petitioner for quashing the aforesaid orders as contained in Annexures 7, 8, 9 and 10.

3. Learned Counsel appearing for the petitioner submits that the District Magistrate, East Singhbhum, Jamshedpur respondent No. 4 while passing the order of preventive detention has taken into consideration two cases, one being Golmuri P.S. case NO. 145 of 2006 and other being Golmuri P.S. case No. 157 of 2006 whereas the petitioner has already been convicted in later case. That apart, four other cases have also been taken into consideration but those cases are of the year (sic) and as such, it can be said to be too stale and moreover, in two of the cases, the petitioner has been acquitted whereas two cases though are pending but the offences alleged are not serious in nature and therefore, there was no necessity of taking recourse of the act for passing the order of detention for maintaining public order.

4. On this background it was submitted that since consideration for passing of the detention order was of the cases which were of the year 2003 having no proximity in between the commission of the offence and passing of order of detention, entire order gets vitiated and moreover, in some of the cases, the petitioner has been acquitted and under this situation, entire order of detention becomes bad in view of the decision rendered in a case of Smt. Bimla Dewan v. Lieutenant- Governor of Delhi 1982 SCC 484.

5. Learned Counsel appearing for the petitioner further submits that the cases pending against the petitioner being not serious are of different natures and as such, the petitioner cannot be termed to be "anti-social element" in terms of Section 2(d) of the Act and on this ground also the impugned order is liable to be set aside.

6. It was further submitted that the petitioner on being convicted in one of the cases was in judicial custody and was not likely to be released and therefore, there was no likelihood of the petitioner indulging himself in any illegal activities jeopardizing public order or tranquility still the authority without being satisfied that the petitioner on being released on bail would indulge himself in the activities which would be prejudicial to the public order passed the impugned order and hence, it suffers from illegality on this score also.

7. In support of his submission learned Counsel has referred to a decision rendered in a case of Rameshwar Shaw Vs. District Magistrate, Burdwan and Another, and also in a case of Vijay Kumar Vs. State of Jammu and Kashmir and Others, .

8. As against this, learned Counsel appealing for the State submits that the petitioner on being convicted u/s 302/34 of the Indian Penal Code and Section 27 of the Arms Act can certainly be said to be anti-social element in terms of Section 2(d)(v) and that the manner in which the petitioner has indulged himself in committing offence has certainly posed threat and danger to maintenance of

public order and tranquility and in this view of the matter, the detaining authority is absolutely justified in passing the impugned order.

9. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that the District Magistrate, East Singhbhum, Jamshedpur respondent No. 4 on being satisfied that the petitioner being an anti-social element, cannot be prevented from indulging in the activities otherwise than the order of detention, passed the order of detention with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order. Such consideration is based on two grounds/cases. In one of the cases he was found guilty of committing murder in one of the busiest road and the other case which is pending has been committed to establish his supremacy and thereby it posed threat and danger of public order and tranquility.

10. It may be stated that subjective satisfaction of the detaining authority is of prima importance in cases of preventive detention of a person. The Courts exercising powers of judicial review are not expected to consider the challenge to an order of detention, as if sitting as appellate Courts, weighing and reappreciating and going into the question and basis of subjective satisfaction. However, the court may not loose sight of the fact that since an order of detention in prison involves curtailment of fundamental right of liberty of citizens, freedom of movement and pursuit of normal life the authorities passing, approving and confirming the order of detention cannot claim absolute immunity in regard to the decision arrived at as it is open to the Courts to see whether there has been due and proper application of mind and all the vital and relevant materials have been noticed and considered. However, at the same time no activity of anti-social element should be allowed to pose threat and danger to maintenance of public order and tranquility. In this background, if the detention order is tested, one would find that there was ample material on record to satisfy the detaining authority to arrive at the conclusion that the acts committed by the petitioner were prejudicial to the maintenance of public order, peace and tranquility if the petitioner is enlarged on bail.

11. It be stated that detention order has been sought to be quashed on the ground that the detaining authority though has passed an order of detention of the petitioner who was in custody but has not recorded reason or satisfaction that the petitioner would likely to commit offence, if released on bail. But from perusal of the impugned order (Annexure 1), it appears that the detaining authority while passing the impugned order was conscious of the fact that the petitioner being a member of a gang commits offence of murder, still crime is being not reported because of the terror of the petitioner and as such it would pose threat and danger of public order and tranquility if the petitioner comes out of the jail and as such, I do not find any substance in this submission.

12. Coming to other aspect of the matter it be noted that the detaining authority in drawing satisfaction has taken into consideration also of those cases in which the petitioner had been acquitted and therefore, on the basis of the ratio laid

down in a case of Smt. Bimla Dewan v. Lieutenant- Governor of Delhi (supra) submission was advanced that the orders impugned can certainly be said to have been passed without application of mind. It is true that the reference of some cases under the order of detention has been given but that cannot be a ground for holding order of detention to be bad particularly in view of the introduction of Section 12-A by Act 9 of 1994 which reads as follows:

12-A. Grounds of detention severable- (1) Where a person has been detained in pursuance of an order of detention whether made before or after the commencement of the Bihar Control of Crimes Act, 1981 u/s 12 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(c) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are

(i) vague,

(ii) non-existent,

(iii) non-relevant,

(iv) not connected or not proximately connected with such person or

(v) invalid for any other reason whatsoever and it is not therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in Section 12 with reference to the remaining ground or grounds and made the order of detention.

(d) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

13. Thus, even if reference of some cases which are non-existent, non-relevant are there, it would not make order of detention invalid. In this respect I may refer to a case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, wherein it has been held that the order of detention can be based only on single ground and even one prejudicial act can be treated as sufficient for forming the subjective satisfaction for detaining a person It has been clarified that if three grounds of detention have been made and two of the grounds for detention are either vague or irrelevant but third ground is relevant, the order of detention cannot be held to be invalid. Similar view has been reiterated in the case of Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, .

14. Thus, the decision relied in a case of Rameshwar Shah v. District Magistrate, Burdwan (supra) and also in a case of Smt. Simla Dewan v. Lieutenant- Governor of Delhi (supra) are not at all helpful to the case of the petitioner.

15. For the reason discussed above, I do not find any merit in this application and accordingly, this application is dismissed.