
(1988) 08 PAT CK 0029
In the Patna High Court
Case No : Criminal W.J.C. Case No. 86 of 1988

Jawala Kant Mishra

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1989) PLJR 153

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Advocate : Uma Kant Shukla and Uma Kant Pd. No. I, for the Appellant; B.N. Yadav, S.C. VII and Rajesh Ranjan Prasad, J.C. to S.C. VII., for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India for issuance of writ of habeas-corpus and for quashing annexures 1 and 2 whereby the petitioner has been detained under the Bihar Control of Crimes Act. By order dated 21.3.1988, the District Magistrate of Motihari ordered the detention of the detenu on being satisfied that the detenu was an antisocial element and that his detention was essential for preventing him from acting in any manner prejudicial to the maintenance of public order. The detention order dated 21.3.1988, (annexure-1) was approved by the State Government on 30th March, 1988. The order evidencing the approval is annexure-2 to this application. The ground for the detention related to four occurrences in which the petitioner was involved. The first ground was that on 21.7.1987, at about 3 A.M. the detenu along with his associates attacked a hotel armed with lethal weapons and assaulted the brother of the first informant Ballam Kumar Singh with daggers and damaged tables and chairs. A criminal case in regard to the incident was lodged by Ballam Kumar Singh on which Chatauni P.S. case No. 57 of 1987, under Sections 147, 148, 149, 307, 426 and 450 of the Indian Penal Code was instituted. The accused attacked the hotel

as the culprits wanted to take possession of a temple which had been checkmated by removal of the Managing Committee and establishment of a new Managing Committee Chargesheet in that case was submitted against the petitioner and others.

2. The second incident leading to his detention took place on 9.4.1987, at about 9.30 P.M. Information in regard to the occurrence was lodged by the first informant Bhagwan Sah to D.S. Thakur, Inspector of police. It was said that at about 6.45 P.M. when the first informant went to the residence of his brother, he found his brother injured and tossing five yards away from his house. On the basis of the statement of Bhagwan Sah Motihari Town P.S. case No. 94 of 1987, was instituted in respect of an offence u/s 302 /34 of the Indian Penal Code. Investigation revealed that there was rivalry between the deceased Suresh on the one hand and the detenu on the other, on account of enmity over obtaining of works contracts and other matters. Chargesheet was submitted against the detenu.

3. The third incident took place on 4.1.1988, at about 9.15 P.M. Information of the occurrence was recorded in the hospital on the following morning in which it was stated that on the night of occurrence some unknown persons were seen standing in front of his readymade garments shop. One of them started urinating just in front of his shop. Thereafter the detenu and his associates attacked the brother of the first informant Shankar Prasad with dagger and caused serious injuries.

4. The fourth incident took place on 18.4.1988, at about 1 in the noon. Information of this occurrence was lodged by Jitendra Singh in Sadar hospital before the police officer. Therein it was stated that on the day of occurrence the first informant Jitendra Singh was returning from court along with Raj Kishore Tiwary. On way they were stopped near a betel shop. There they were attacked with dantas and daggers as a result of which Jitendra Singh and Raj Kishore Tiwary rescued (sic) seriously. A case u/s 307 of the Indian Penal Code and other sections was instituted against the detenu and others.

5. The four incidents enumerated above in the heart of town, disturbed public order. The detenu was in jail in connection with Chhatauni P.S. case No. 5 of 1988, in which chargesheet had been submitted under sections 323 , 324 , 326 and 307 of the Indian Penal Code. The District Magistrate was aware of the fact that the detenu was in jail. He had reasonable ground for believing that he was likely to be granted bail in the case. He, therefore, passed order of detention impugned in this application.

6. The detaining authority was not very wrong in assuming that bail would be granted to the detenu in Chhatauni P.S. case No. 5 of 1988, as bail is granted more often than not in case u/s 307 of the Indian Penal Code. The detention of the detenu having been approved by the State Government well within time and by the Advisory Board, the petitioner has filed the present application for

quashing his detention.

7. Learned counsel for the petitioner urged only four points for assailing the detention. The first ground, vehemently placed by learned counsel for the petitioner, was that the fact that the petitioner was about to be released on bail in the substantive case of Chhatauni (case No. 5 of 1988) cannot be made a ground for detention. The Second ground was that there was non-application of mind on the part of the detaining authority in as much as the detenu had not been made accused in the first case although that was mentioned in the ground for detention.

8. In a series of cases the law laid down by the Supreme Court is that the fact that the detenu is in jail is not a ground by itself for quashing the detention. If the detaining authority passes the detention orders without being aware of the fact that the detenu was in jail and could not disturb public order in any manner that would vitiate the detention. The Supreme Court has, however, held in series of cases that if the detaining authority passes the detention order knowing full well that the detention of the detenu is called for despite the fact that he is in jail, the detention would be a valid one. Learned counsel for the petitioner relied on Ramesh Yadav Vs. District Magistrate, Etah and Others, : to substantiate his submission that pendency of bail application and apprehension of detenu being granted bail is not a ground for detention. It is true that the Supreme Court observed that where the order of detention is passed because the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activity in the area was not proper. The real ratio of decision appears at paragraph 5 of the judgment where it has been stated that three of the five grounds related to 1980, therefore, were stale and not available to be in an order of detention passed in 1984. The detenu of case had been detained once even prior to the detention in question. That detention had been quashed by the High Court. The Supreme Court observed that a criminal trial had also taken place and the accused (detenu) had been acquitted. That ground was, therefore, not available. Thus observed the Supreme Court.

9. I find that in Bal Chand Bansal Vs. Union of India (UOI) and Ors, case the Supreme Court upheld the detention where it was found that the detaining authority was aware of the fact that the detenu was in judicial custody and there was apprehension that he would be released on bail. The Supreme Court upheld the detention. In my view, the decision of the Supreme Court in the case of Balchand Bansal v. Union of India & others (supra) is more apt and must be accepted. In Balchand Bansal's case (supra) also the detaining authority had observed that the detenu was likely to be granted bail. The Supreme Court upheld the detention. Both the decisions having been rendered by benches of equal strength the latter judgment must prevail. In that view of the matter the fact that there was apprehension that the detenu would be released on bail, cannot vitiate the detention. The first point urged on behalf of the petitioner, therefore, fails and is rejected, accordingly.

10. Adverting to the second ground for detention 1 find no substance in the contention that there was non-application of mind. It is true that the detenu was not named in the first information report but the first ground for detention was a larger bundle of facts. It was stated therein what was the cause for the assault. It is true that the detenu was not named in the first information report but investigation revealed that he was also "participis criminis" in the incident. The other relevant fact was that the detenu had been chargesheeted in that case. Too much emphasis cannot be attached to the fact that the detenu was not named: in the first information report where investigation had been held and chargesheet had been submitted sending the detenu also for trial. In that view of the matter, it cannot be held that there was non-application of mind in regard to ground No. 1.

11. It was then urged on behalf of the petitioner that the District Magistrate should have passed order for his detention only for three months. He could extend the period of detention but for not more than three months at a time. Reliance was placed to support this proposition upon the proviso to Section 12(2) of the Act. There being no material to show that the District Magistrate had passed orders extending the detention from three months, the detention was invalid and must be quashed.

12. I regret the submission is entirely unfounded. The proviso to Section 12 (2) of the Act does not provide maximum period of detention. It should be appreciated that the proviso is a super imposition on the main provision contained in section 12 (2) of the Act which lays down that the State Government may authorise a District Magistrate to exercise powers u/s 12 (1). When so authorised the District Magistrate should also have the jurisdiction to pass orders for detention in terms of Section 12 (2). The main Section provides that the State Government may vest a District Magistrate with the power to detain but the duration of that authorisation may be for such period as may be specified in the order. The proviso lays down that the authorisation to the District Magistrate cannot exceed three months in the first instance and the State Government may amend it by extending such periods of authorisation from time to time. It is thus obvious that the period in the proviso to Section 12 (2) is the limit for which the State Government may authorise a District Magistrate to pass orders for detention. It is not the petitioner's stand that in this case the District Magistrate of East Champaran had not been authorised by the State Government to detain the detenu. Reliance, therefore, placed upon Section 12 (2) is thus entirely misconceived. The contention based thereon must be rejected outright.

13. The period for which a person may be detained is provided u/s 22 of the Bihar Control of Crimes Act which reads as follows: -

Maximum period of detention. --The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed u/s 21 shall be twelve 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.

Learned counsel for the petitioner submitted that the detaining authority, in this case, the District Magistrate not having specified the period of detention, the entire detention is vitiated and liable to be quashed.

14. The above submission is no more available to the petitioner. The law on the subject has been set at rest by the two decisions of the Supreme Court. The first case on the point is that of Ujagar Singh Vs. The State of The Punjab, . That case dealt with the detention under the Preventive Detention Act, 1950. The submission agitated before me was squarely raised and repealed in the following words:--

Two other points of a subsidiary nature were also raised, namely, that the order was bad as the period of detention was not specified therein as appears to be required by S. 12 and that the grounds given did not purport to state that the authority making the order was the Governor of the State.

There is no substance in the last two points. Section 12 of the Act does not require that the period of detention should be specified in the order itself where the detention is with a view to preventing any person from acting in any manner prejudicial to the maintenance of public order. The section itself provides that he can be detained without obtaining the opinion of an Advisory Board for a period longer than three months but not exceeding one year from the date of detention. Normally, the detention period shall not exceed three months unless an Advisory Board reports before the expiration of the said period that there is in its opinion sufficient cause for such detention.

In view of these provisions, the non-specification of any definite period in the detention order is not material omission rendering the order itself invalid.

The same question was again raised in Ashok Kumar v. Delhi Administration and others 1982 S.C. 1143. A.P. Sen, J. repealed the submission in the following words:--

It is plain from a reading of S.3 of the Act that there is an obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be noticed that sub-s. (1) of S. 3 stops with the words "make an order directing that such person be detained", and does not go further and prescribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section" and shall specify the period of such detention. "What is true of sub-s. (1) of S. 3 is also true of sub-s. (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a Section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all

circumstances extend to the maximum period of 12 months as laid down in S.13 of the Act.

15. It is thus obvious that the failure of the District Magistrate to specify the period of detention did not vitiate the detention. The submission in this behalf thus lacks substance and is rejected accordingly.

16. Having discussed all these submissions urged on behalf of the petitioner and the grounds urged before me having failed to impress, I find no merit in this application. It is dismissed accordingly. In the circumstances of the case, however, there shall be no order as to costs.