

(2003) 03 PAT CK 0112
In the Patna High Court
Case No : Criminal W.J.C. No. 430 of 2002

Jhunjhun Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Arms Act, 1959 — Section 27

Bihar Control of Crimes Act, 1981 — Section 12(2), 12(3), 21(1), 22

Penal Code, 1860 (IPC) — Section 302, 307, 386

Citation : (2003) 3 PLJR 858

Hon'ble Judges : S.N. Jha, J;A.K. Verma, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, Bimal Kumar and Nilesh Kumar, for the Appellant; Amar Nath Singh and Shailendra Kumar, for the Respondent

Judgement

S.N. Jha and A.K. Verma, JJ.—The Petitioner has been detained, by the District Magistrate, Samastipur u/s 12 (2) of the Bihar Control of Crimes Act, 1981 (for short "the Act") vide his memo No. 20588/CCAL dated 30.9.2002. The detention was approved and confirmed by the State Government u/s 12(3) and Section 21(1) read with Section 22 of the Act on 5.10.2002 and 2.11.2002 respectively. The Petitioner seeks quashing of the aforesaid orders.

2. The detention order alongwith grounds of detention was served on the Petitioner on 5.10.2002. He filed representation on 12.10.2002. The representation was rejected on 26.10.2002. The rejection was communicated on 28.10.2002.

3. Shri Ajay Kumar Thakur, learned Counsel for the Petitioner submitted that there was inordinate delay in disposal of the representation amounting to violation of statutory and constitutional right of the Petitioner and detention is fit to be quashed on this ground alone. He also submitted that the grounds relate to breach of law and order and not public order and therefore, the Petitioner cannot be detained within the ambit of the Act. Counsel however, laid emphasis on the

first ground. The relevant facts as appearing from the concerned file of the Department are as follows.

4. The representation was received in the Department on 18.10.2002. The comment of the District Magistrate was called for on 21.10.2002 and the same was received on 23.10.2002. Thereafter the Deputy Secretary dealt with the matter on 24.10.2002. On 25.10.2002 the Home Commissioner submitted his notes. Agreeing with the notes the Minister-in-charge i.e. the Chief Minister rejected the representation on 26.10.2002.

5. Shri Thakur submitted that there is no explanation for the period between 12.10.2002 and 18.10.2002. He pointed out that the period of delay by itself cannot be conclusive but where the delay is not explained by the authorities it should be held that the representation did not receive expeditious consideration which it deserved. In the circumstances, the continuance of detention cannot be said to be in accordance with law.

6. The case was heard on 6.3.2003 and the order was postponed to enable the Standing Counsel to take further instruction with respect to the period between 12.10.2002 and 18.10.2002. Today when the case was called on, learned Standing Counsel stated that the representation was sent by special messenger on 16.10.2002. Earlier it was proposed to be sent by registered post but as the offices during the period between 13.10.2002 and 15.10.2002 were closed, being Sunday and Durga Puja holidays, the Jail authorities decided to send it by special messenger at the earliest. Accordingly, on 16.10.2002 a special messenger was deputed to take the representation to the Department where it was actually received on 17.10.2002. He produced the file of Rosera Sub-jail from which it appears that the representation was received in the Department by one Yagya Nand Prasad on 17.10.2002. 20.10.2002 being Sunday, again, the comments were called for from the detaining authority on the following day i.e. 21.10.2002. The rest of the dates have been noted above.

7. As fairly stated by the counsel for the Petitioner, what is conclusive is not the period of delay but the explanation. While a longer delay may be condoned, a shorter period may not be condoned in the absence of a cogent explanation. This precisely has been held by the Supreme Court. We may observe that while considering the question of delay, the court ought to see whether there was due awareness on the part of the authorities for prompt decision on the representation. Where the authorities sit over the representation or it otherwise appears that they took it casually, the delay may be fatal, but where despite due awareness in the mind of the authority the delay occurs, it may not be said to be fatal. As noticed above, the days following the submission of the representation i.e. 13.10.2002 to 15.10.2002 being closed, nothing could be done until 16.10.2002. The authorities apparently having realized that sufficient time had lapsed, decided to send that representation to the Government by special messenger and this was done on the same day. We are satisfied that delay between 12.10.2002 and 13.10.2002 has been satisfactorily explained and on

this ground the detention cannot be said to be illegal.

8. Though as indicated above, counsel did not press the second contention, we have gone through the grounds of detention from which it appears that the Petitioner figures as an accused in at least two cases being Bibhutipur Rs. Case No. 13/ 2000 under Sections 302 etc. of the Penal Code and Section 27 of the Arms Act with respect to an occurrence which took place on 1.2.2002, and Bibhutipur Rs. Case No. 139/2001 under Sections 307, 386 etc. of the Penal Code relating to an occurrence of 16.11.2001. In the first case, one Mahtma Comrade Ramna Mahto was shot dead in broad day light when he was addressing a gathering highlighting the misdeeds of gangster Tuntun Singh. The Petitioner is said to be his associate. In the second case the Petitioner allegedly demanded rangdari from persons belonging to Sahni caste and on refusal assaulted them. In both the cases charge-sheet has been submitted against the Petitioner. It is well settled that where the alleged acts are likely to affect the even tempo of life, it cannot be said that they remained within the realm of law and order. Where the murder is committed or assault takes place on refusal to pay rangdari in broad day light, it is obvious that the act is likely to adversely affect the even flow of life and therefore, in such a case, it cannot be said that preventive action cannot be taken against the person concerned. In any view, the detention depends upon the (sic)