
(1988) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 238 of 1988

Kudratullah @ Kudrat Khan

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 01-12-1988

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2), 2(d)(iii)
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 144
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 34

Citation : (1989) PLJR 453

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Advocate : Braj Kishore Prasad and Mrs. Anjana Prakash, for the Appellant; R.N. Prasad and Ram Swaroop Prasad for the State, 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 quashing the petitioner's detention u/s 12(2) of the Bihar Control of Crimes Act, 1981. The petitioner had been detained by the District Magistrate, Singhbhum by order dated 1.6.1985. That detention came to an end on 3.6.1986. That detention did not bring about any change in the petitioner. He committed offences on three dates after release from detention. District Magistrate, Singhbhum, therefore, passed fresh order of detention on 4.7.1988. The ground for detention was an incident which took place on 26.5.1988 at about 9.30 P.M., in the town of Jamshedpur. On that day the petitioner fired and killed Bijoy Agrawal, a shop keeper in Jugsalai market area. Killing of Bijoy Agrawal sent a shock wave resulting in closure of shops. On the following day i.e., on 27.5.1988 the shops did not reopen out of fear and terror of the petitioner. The killing by the petitioner created communal tension between Hindus and Muslims. In order to restore public order, prohibitory order u/s 144 of the Code of Criminal Procedure was issued. Additional police force was deputed

to preempt further communal riots. Jamshedpur has a history of communal tension. This was the sole ground for passing the order of detention. In the order of detention, the District Magistrate mentioned two other incidents in which the petitioner had taken part. One was an incident about the commission of offences under sections 341 and 323 of the Indian Penal Code which took place on 3.7.1986 within Jugsalai police station. Another related to an incident for which a case under sections 341 /448 /323 /324 /307 /34 of the Indian Penal Code was instituted. Seeing the history of the petitioner and his latest act of murder, the impugned detention order was passed on 4.7.1988. It may be mentioned that when the detention order was passed, the detenu was in jail in connection with some substantive case, may be the case in relation to the murder of Bijo Agrawal. Seeing the activities of the detenu the impugned detention order was passed.

2. Learned counsel for the petitioner has assailed the detention on various grounds. The first submission is that only one case i.e., Jugsalai P.S. Case No. 87 dated 26.5.1988 u/s 302 of the Indian Penal Code and 27 of the Arms Act having been mentioned in the detention order the petitioner could not be held to be a habitual offender.

3. In the present case, on the facts and in the circumstances of the case, I have some difficulty in holding that the petitioner could not be held to be a habitual offender. He has been detained only two years back for his anti-social activities. When he came out of jail, he committed two other offences which are mentioned as antecedents of the petitioner. The fact that the detenu had been detained earlier in 1985 was good material coupled with Jugsalai P.S. Case No. 87/88 dated 26.5.1988 for holding that the detenu was a habitual offender.

4. Besides the above, We find that the detenu had committed offence which were subject matter of Jugsalai P.S. Case No. 108/86 as well as Jugsalai P.S. Case No. 92/87. Learned Standing Counsel submitted that the antecedents of the petitioner were not grounds for detention, and therefore the validity of the detention could not be tested with reference to the antecedents circumstances Nos. 1 and 2. Mr. Braj Kishore Prasad, learned counsel for the petitioner submitted that all facts mentioned in the ground of detention must be held to be grounds as they cannot be dissected into grounds or backgrounds. Reliance was placed on the case of Mohd. Yousuf Rather vs. State of Jammu and Kashmir and others (A.I.R., 1979, Supreme Court, 1925). Without conceding whether antecedents circumstances can vitiate a detention or not and whether a single ground can turn an offender into a habitual offender or not, I would like to emphasize that even if the case under sections 341 and 323 of the Indian Penal Code which was the subject matter of Jugsalai P.S. Case No. 108/86 and another case u/s 307 /34 of the Indian Penal Code etc., which was the subject matter of Jugsalai P.S. Case No. 92/87 be taken to be the grounds of detention, the detention cannot be assailed. I shall assume that these two antecedents also may be held to be the grounds. Let me test these grounds on the basis of the

decisions of this Court and the Supreme Court.

5. Learned counsel for the petitioner has not disputed that the incidents of 26.5.1988 relating to the murder of Bijo Agrawal in the market area of Jugasalai in the town of Jamshedpur must have disturbed the public order. I need not, therefore waste my time over that incident. So far as Jugasalai P.S. Case No. 108/86 dated 3.7.1986 is concerned, this case was instituted on the statement of one Basant Kumar Shrivastava. He reported at Jugasalai police station that on 3.7.1986 at about 1 in the afternoon he was waiting at a Pan shop near Jugsalai railway crossing along with Ram Nath Prasad, Md. Aziz Gaddi and Kamal Arfi. At that time, petitioner Kudrat Khan alias Kudratullah came there on his motor bike and parked the same almost touching the motor bike of the first informant. The detenu like a bully ordered the first informant and others to shift their motor bike so that he could park his motor cycle there. The first informant told him to park his motor cycle nearby. There upon the detenu told that if he did not remove their motor bike, he would shoot them. His demeanour showed that he was armed with a revolver. He abused the first informant and his friends and threatened them to kill. Lot of people assembled. Thereafter, Kudrat Khan left the place after abusing saying "if I am the real son of a Muslim, I will not leave you alive". Such an incident would certainly disturb the public order. With the reputation that the detenu had, every body would become terrified. In my view, therefore, this incident could actually be taken as a ground for detaining the petitioner. The second incident which has been mentioned in the ground for detention as the second antecedent relates to an incident which took place on 4.6.1987. That case was instituted by Mustaque Ahmad Khan. It was stated in the first information report that on 4.6.1987 at about 7 P.M., informant Mustaque Ahmad Khan was going to the railway station from his house. He had gone hardly 25 yards away from his house, when some persons ambushed him. They assaulted the informant. They followed the informant even up to his house and when the father of the first informant came out of his house to see what was going on, he was also assaulted by the miscreants. When the incident of assault on the first informant was taking place, Kudrat Khan, the detenu, was standing close by. The first informant formed an impression that all the miscreants as well as Kudrat Khan had assaulted the first informant and his father with lathi, Bhujali fists and slaps acting in concert. After assault, the miscreants including the petitioner fled away. This incident also in my view, had the propensity of disturbing the public order. In my view, therefore, the three incidents, the background and the antecedents, all were sufficient for issuance of an order of detention. They were adequate grounds for ordering the petitioner's detention.

6. Learned counsel for the petitioner submitted that the petitioner having been acquitted in Jugsalai P.S. Case No. 108/86 dated 3.7.1986, that could not constitute a ground for detention. I regret, I am unable to see any substance in this submission. The petitioner was acquitted in that case as the case was compounded. That happened because no witness had the courage to depose against him. The merit of the prosecution allegation was, therefore, never tested.

Where a case is compounded and acquittal follows because no evidence is led by the prosecution, that is an apt case where the detaining authority may form an opinion that the prosecution has been suborned. In the case of Mohd. Subrati alias Mohd. Karim vs. State of West Bengal (A.I.R., 1973, Supreme Court, 202) it was observed that "the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the latter", the order of detention would not be bad merely because the criminal prosecution had failed. Same question fell for consideration in Shri Shiv Ratan Makim vs. Union of India and others (A.I.R., 1986, Supreme Court, 610). P.N. Bhagwati, C.J., delivering the judgment of the Court approved the ratio of the case of Md. Subrati alias Md. Karim (supra). His Lordship observed that the argument that institution of a criminal prosecution or acquittal would bar detention was un-sound and that it overlooked "the fact that the object of making an order of detention is preventive while the object of criminal prosecution is punitive". I cannot refrain myself from taking special note of the observations of Bhagwati, C.J., which is as follows :--

It was pointed out by this Court in that case that the Act creates in the authority concerned a new jurisdiction to make orders for preventive detention on their subjective satisfaction on grounds of suspicion of commission in future of acts prejudicial to the community in general. This jurisdiction is different from that of judicial trial in Courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would therefore not operate as a bar to a detention order or render it mala fide.

7. Mr. Braj Kishore Prasad, learned counsel for the petitioner did not contest the proposition that an incident, which has been the subject matter of criminal trial and where the trial has ended in acquittal, that can reasonably be used for passing an order of detention. The submission of Mr. Prasad was very limited and rather ingenious. He submitted that the question was not one of previous acquittal in a criminal case but was one of awareness of acquittal in a criminal case. Since the detention order did not reveal the awareness of the District Magistrate about the acquittal of the detenu in the said Jugsalai P.S. Case No. 108/86, the detention must be held to be invalid for non-application of mind to the relevant circumstances. I regret, I am unable to find any force in this submission. Once it is conceded that acquittal is no bar to the facts of a criminal case being used as a ground for detention, there is no escape from the conclusion that the fact of acquittal is not a relevant matter. Non-awareness of an irrelevant matter cannot vitiate a detention. In that view of the matter, the detention cannot be successfully assailed for the reasons that the detention order did not show that the petitioner had been acquitted in Jugsalai P.S. Case No. 108/86.

8. In regard to the second antecedent fact, which was the subject matter of Jugsalai P.S. Case No. 97/87 dated 4.6.1987, learned counsel for the petitioner did not contend that that was not a circumstance from which it could be held that

public order had been disturbed. It was submitted that the petitioner was not named as an accused in the first information report. Factually, it is not correct. The petitioner is certainly named in the first information report. It is true that there is no allegation that the petitioner assaulted the first informant or his father, but the narration of facts shows clearly that the incident had taken place at the instance of the petitioner. For that reason, investigation showed the complicity of the petitioner in the crime. Charge sheet was, therefore, submitted against him as well. To sum up, my conclusion is that the antecedents circumstances are not ground. Even if they are assumed to be the grounds, in the instant case, there is no reason to hold that the two incidents which were the subject matter of Jugsalai P.S. Case No. 108 of 1986 and 92/87 were not relevant materials. Copies of the first information reports, the charge sheet and the brief of the two cases had been supplied to the petitioner.

9. From the above, it follows that the petitioner had taken part in three incidents. These coupled with the fact that only a couple of years back, the petitioner had been released from detention under the same Bihar Control of Crimes Act, on the facts and in the circumstances of the case, it is sufficient to hold that the petitioner was a habitual offender.

10. There is yet another aspect of the matter. For passing an order of detention, the detenu must be an anti-social element. The definition has five elements. The first is that the anti-social element must be a member or leader of a gang habitually committing offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. The third element for holding a person as an anti-social element is covered by section 2(d)(iii) of the Bihar Control of Crimes Act, 1981 which reads as follows:--

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religious, racial or language groups or castes or communities; or

From the above, it will be seen that whosoever by words or acts promotes feelings of enmity or hatred between different religious, racial or language groups or castes or communities, he must be held to be an anti-social element. In this case the District Magistrate has stated in clear terms in the order of detention that the act of the petitioner in killing Bijo Agrawal created to communal tension in parts of Jamshedpur town. This is sufficient for the detenu to be branded as an anti-social element. Nothing has been said in the petition in regard to this proposition. The petitioner must, therefore, be held to be an anti-social element for this reason as well.

11. Learned counsel for the petitioner also submitted that the detention order was passed because the District Magistrate was of the view that he was likely to be released on bail was--an extraneous circumstance which vitiated the detention order. He submitted that nothing had been stated in the grounds of

detention on what basis the District Magistrate formed the opinion that the detenu was likely to be released on bail. The apprehension or premonition that bail would be granted can be based on several circumstances. All of them cannot be set out in the grounds of detention. Sometimes, it may be based upon the general reputation of the Judge or Judges hearing bail application. It may be based upon the general run in the matter of disposal of bail application. Certainly I would not expect aspersion by the police or District Magistrate upon the reputation and integrity of Judges. It is, therefore, not always possible to spell out the grounds or the circumstances on which the belief that bail would be granted be stated. Reliance placed by the learned counsel for the petitioner upon the case of Ramesh Yadav vs. District Magistrate, Etah and others (A.I.R., 1986 Supreme Court 315) in that behalf is misplaced. That was a case where the detention had been held to be invalid for various reasons. Several infirmities in the order of detention was spelt out at paragraph 5. In regard to the propriety of opposing a bail application; rather than detaining was the subject matter of consideration before the Supreme Court in the case of Shri Shiv Ratan Makim (supra). That is the verdict of the Supreme Court and I would leave the matter at that. That aspect of the matter also runs counter to the decision of the Supreme Court in the case of Tusher Govindji Shah vs. Union of India and other (A.I.R., 1985 Supreme Court, 511 at page 513 paragraph 5). In my view, therefore, in the grounds of detention, not having set out the circumstance from which the reasonable belief of being released on bail was based, cannot in the special facts and circumstances of the case, vitiate the detention. For all the reasons stated above, I find no merit in this application. It is dismissed accordingly.