

(2006) 09 PAT CK 0067
In the Patna High Court
Case No : Cr.W.J.C No. 199 of 2006

Kundan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Arms Act, 1959 — Section 12, 25(1b)A, 26, 27, 35
Bihar Control of Crimes Act, 1981 — Section 12
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2006) 4 PLJR 394

Hon'ble Judges : Narayan Roy, J; Madhavendra Saran, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, for the Appellant; Lalit Kishore, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the parties. The order of detention passed under the provisions of Section 12 of the Bihar Control of Crimes Act (hereinafter to be referred to as "Act") is under challenge.

2. It appears that the petitioner by virtue of the order, as contained in annexure 1, issued vide memo No. 2009 dated 23.11.2005, was detained by the order of the District Magistrate, Begusarai, as his activities and involvement in commission of crime were found to be prejudicial to the maintenance of public order. The order of detention was confirmed and subsequently approved by the State Government under the provisions of the Act.

3. Mr. A.K.Thakur, learned counsel for the petitioner, submitted that the petitioner was detained on the grounds as mentioned in the order of detention. It is further submitted that three grounds have been shown for the detention of the petitioner; first one being Balia Police Station Case No. 158/ 2003, where the petitioner was made an accused for offences under sections 341/ 323/325/379/504/34 of the Indian Penal Code and also under sections 25(1-

b)A/26/35 of the Arms Act, secondly Balia Police Station Case No. 210/2003 for offences under sections 147/148/149/307 of the Indian Penal Code and Section 27 of the Arms Act and lastly Balia Police Station Case No. 42/ 2004 for offences under sections 143/341/ 323/384/364 of the Indian Penal Code. Learned counsel, therefore, submitted that there is no close proximity in between the crime committed by the petitioner and the order of detention, which was passed on 23rd November, 2005. Learned counsel further submitted that the involvement of the petitioner in the cases, as referred to above, in no way, can be said to be prejudicial to the maintenance of public order, rather these are the cases of law and order, and, therefore, order of detention cannot be upheld. It is also submitted by Mr. Thakur, learned counsel for the petitioner, that the representation filed by the petitioner was not properly and expeditiously disposed of, which prejudiced the case of the petitioner.

4. According to learned counsel for the petitioner, the representation tiled by the petitioner was placed before the authority concerned on 22.12.2005 and after processing the same, it was finally disposed of on 4.1.2006 within a period of 12 days. The delay in disposal of the representation filed by the petitioner, thus, does not appear to be unreasonable, rather it appears that the same was disposed of with utmost expedition.

5. So far the grounds of detention arc concerned, learned Additional Advocate General No. 3 submitted that the petitioner appears to be a habitual offender and he had also committed offences under sections 302 and 364 of the Indian Penal Code. which would be prejudicial to the maintenance of public order. It is further submitted by learned counsel for the State that the last offence alleged to have been committed by the petitioner is of the year 2004 and, thus, it appears to be a case of close proximity with the order of detention of the petitioner in the background of the past antecedents. Learned counsel has tried to persuade the Court that the activity of the petitioner was found to be prejudicial lo the maintenance of public order as fear psychosis was created in the minds of the people of the locality, as he confined the area of operation within Balia Police Station.

6. The detention of the petitioner under the provisions of Section 12 of the Act was issued on 23rd of November, 2005 taking into consideration the last offence committed by him in the year 2004. No case has been cited against the petitioner in between 12th of March, 2004 and 23rd of November, 2005 even making it a case that he is a habitual offender.

7. From the nature of the cases, cited against the petitioner, which have been made grounds of his detention, it appears to be a case of law and order and not of public order, as his activities were not found to be disturbing the public tranquility or peace of the people of the area. More so, we do not find close proximity with the crime committed by the petitioner and the grounds on which the petitioner has been detained appear to be stale one.

8. Regard being had to the facts and circumstances of the case and for the reasons aforementioned, the order of detention passed against the petitioner is held to be not sustainable. In the result, this application is allowed, order of detention, as contained in annexure 1, is set aside and the petitioner is set at liberty forthwith, if not required in any other case.