

(1986) 10 PAT CK 0013

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 57 of 1986 (R)

Mahendra Singh @ Mahendra Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-10-1986

Acts Referred:

Arms Act, 1959 — Section 25(A), 26, 27, 35
Criminal Procedure Code, 1973 (CrPC) — Section 107
National Security Act, 1980 — Section 10, 3(2)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1986) PLJR 785

Hon'ble Judges : P.S. Mishra, J; M.M. Prasad, J

Bench : Division Bench

Advocate : Radhey Shyam Pandey and U.K. Sarkar, for the Appellant; S.K. Chattopadhyaya and Rajnandan Sahay and Bijoy Dutta, for the Respondent

Final Decision : Allowed

Judgement

Prabha Shanker Mishra and Madan Mohan Prasad, JJ.—The petitioner has invoked this Court's jurisdiction under Articles 226 and 227 of the Constitution of India seeking a writ in the nature of Habeas Corpus. It appears that in connection with some quarrel between two groups of people (described as Mafia) of Adityapur, a quarter of the city of Jamshedpur, a proceeding u/s 107Cr.P.C. was initiated on 1.11.85. The petitioner who was a new man in the said area, for first time was seen belonging to one such group on 31.10.85. On 3.11.85, one Jairam Sharma was murdered on the busy chowk of the said area and a case in that connection was registered being Adityapur P.S. case no. 187, dated 3.11.85. The petitioner was named as an accused in the said case. In connection with the said substantive offence, he was taken in custody but on bail released by the Court. On 30.1.86, the District Magistrate, Singhbhum at Chaibasa recording as the back ground of the petitioner that he was a new man in the area though he indulged in anti social activities, he could not be named in any case because of lack of identity and for the first time his criminal activities came into light on

31.10.85, when the two Maria groups of Adityapur area came into competition with each other and preventive action was taken vide non F.I.R. no. 58/85, on 1.11.85 u/s 107Cr.P.C., issued an order of detention u/s 3 (2) of the National Security Act. On 4.2.86, grounds were served upon him which were as extracted :

1. On 3.11.85 when Jairam Sharma with his associates were talking on Pan Gumti Chowk, Mahendra Singh with his leader Sambhunath Singh and other associates reached there on a Motor Cycle and a Car and fired several rounds on him. To protect himself Jairam Sharma being injured tried to escape, but Mahendra Singh with his associates shot him dead in broad day light on the busy chowk. Panic was created in the area and the communication on main Road remained stopped hours together. In this connection Adityapur P.S. case no. 187 dated 3.11.85 u/s 302/34I.P.C. and 27Arms Act was registered. Mahendra Singh is a named accused in this case. Mahendra Singh with his associates Devraj Singh and Baban Singh were arrested in the quarter of Shivilal Singh on the road no. 12, Adityapur Housing Colony. On search, Rifle, Gun, Pistol and sufficient quantity of ammunitions were recovered from them for which Adityapur P.S. case no. 183 dated 3.11.85 u/s 25(A) 26/27/35Arms Act was registered.

2. He was released on Bail and thereafter violating the terms and conditions of Bail he was moving and creating panic in the area. The people of the area have so much been terrorised that no one dare to inform the police. He started threatening the witnesses which has been reported by an informant of P.S. On 27.1.86 he with his associates Prasad Narain Singh were found in the Housing Colony with Arms and Ammunitions and threatening the witnesses. This created panic in the area the public order was disturbed. This has been entered in Adityapur P.S. Sanha No. 424 dated 27.1.86. When he with Prasad Narain Singh was going on Tempo, police arrested him on the Main Road of Industrial area in the night of 27.1.86. On search a regular 38 bore Revolver (enfield) No. A-2571 loaded with cartridges was recovered from Mahendra Singh. In this connection Adityapur P.S. Case no. 18 dated 28.1.86 u/s 25(A) 26/27/ 35Arms Act was registered.

The petitioner's detention was approved by the State Government on 10.2.86 and after the advise of the Advisory Board, confirmed by the State Government on 14.3.86. The petitioner has moved this Court, questioning the validity of the order of detention.

2. Mr. Radhey Shayam Pandey, Learned Counsel for the petitioner has raised two contentions; (i) that the grounds for detaining the petitioner are either vague or do not warrant action u/s 3 (2) of the Act and (ii) that the mandatory requirements of section 10 of the Act is not fulfilled as the ease of the petitioner was not placed by the State Government before the Advisory Board within the period stipulated therein.

3. Learned Counsel for the State has contested the second contention by drawing our attention to the fact that the State Government after the petitioner's

detention on 15.2.86 informed the Central Government as required by law and on the same day, referred the petitioner's case to the Advisory Board. According to him the requirement u/s 10 was complied with once the State Government referred the matter to the Advisory Board, whether it was attended to by the Advisory Board or not. But Section 10 has to be complied with in substance and in spirit. The expression used in it does not end the liability of the State Government with its writing or making a communication to the Board, but placing before the Advisory Board, the grounds on which the petitioner was detained. To the petitioner's averment that his case was not placed before the Advisory Board, the only reply in the counter affidavit is that the State Government referred it to the Board on 15.2.86. The State Government has not come forward with a case that the grounds on which the order was made and the representation, if any, made by the petitioner were placed before the Advisory Board within the statutory period of three weeks; The Advisory Board took up the case of the petitioner only on 1.3.86. There is no material before us rebutting the petitioner's assertion that before the Advisory Board, actually took up the petitioner's case for consideration, the grounds on which the order was made by the District Magistrate and the State Government were placed before it.

4. The two grounds on which the petitioner has been detained have been quoted in full above. A mere glance to ground no. 2 is enough to satisfy that except denying the allegation contained therein, the petitioner cannot make any effective representation. A ground which is vague and against which no effective representation can be made is not a ground even for the subjective satisfaction of the detaining authority. Ground no. 1 relates to a substantive offence. A case in that behalf has already been registered and the petitioner has been ordered to be released on bail. It is well settled that every breach of the peace or violation of law and order does not amount to disturbance of public order. It has been pointed out more than once that law and order represents the largest circle within which is the next circle representing public order and the smallest circle within represents the security of State. The matter appertaining to law and order can become a matter appertaining to public order if it is shown that by that even life of people is disturbed. Expressions like panic created, communication on the road stopped etc. in relation to an offence may not for the detaining authority be sufficient to detain a person unless in the act of that person intention to disturb the public order is reflected. Ground no. 1 evidently is one falling within the realm of law and order but there is nothing in it to show that the petitioner cannot be adequately dealt with by the regular procedure of law for the offence enumerated therein. In that sense, ground no. 1 is only a matter appertaining to law and order and not public order. We are satisfied that there is force in both the contentions of the Learned Counsel for the petitioner. The petitioner's detention is invalid. In the result, this application is allowed and accordingly we direct that the petitioner must be released forthwith.