

(2003) 04 PAT CK 0039

In the Patna High Court

Case No : Criminal W.J.C. No. 14 of 2003

Manoj Kumar Gupta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 —
Section 3(1)

Citation : (2003) 3 PLJR 305

Hon'ble Judges : S.N. Jha, J;B.N.P. Singh, J

Bench : Division Bench

Advocate : Kislay and Ranjeet Kumar, for the Appellant; Amar Nath Singh and Shailendra Kumar, for the Respondent

Judgement

S.N. Jha and B.N.P Singh, JJ.—The Petitioner has been detained u/s 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, by the State Government, vide memo No. 2198 dated 4.9.2002, Home (Special) Department. The detention order along with grounds of detention was served on the Petitioner on 30.9.2002. The Petitioner made representation on 4.10.2002. After the Advisory Board concurred in the order on 5.12.2002, the detention was confirmed and the same was communicated to the Petitioner on 28.12.2002. The representation filed by the Petitioner on 4.10.2002 remained unconsidered. In its affidavit, vide paragraph 7, the Department has taken a stand that the representation was not received in the Department till date.

2. A doubt arose, when the case was taken up yesterday, as to whether the Petitioner had in fact filed representation, as claimed by him, or not the State Counsel was directed to take instruction from the Superintendent, Adarsh Central Jail, Beur, where the Petitioner is lodged. Today when the case was taken up, an affidavit sworn by Shri Balmohan Naik, Superintendent, Adarsh Central Jail, Beur, was filed to the effect that the Petitioner did file representation against the detention on 4.10.2002. As per the affidavit, the representation was forwarded

to the I.G. (Prison), Bihar, vide memo No. 3035 dated 5.10.2002 with a request to forward it to the Secretary, Home, (Special) Department, to whom it was addressed. Going by affidavit of the Department, it is obvious that the representation was never forwarded by the office of the I.G. (Prison) to the Home (Special) Department.

3. Expeditious consideration of the representation is a valuable right guaranteed to a detenu under the provisions of respective detention law as also under Article 22(5) of the Constitution of India which in the instant case, has been denied to the Petitioner. It is rather a case of total non-consideration and, therefore, it is plain that detention of the Petitioner has to be struck down on this ground alone.

4. The detention order dated 4.9.2002 along with consequential order confirming the same is accordingly quashed and the Petitioner is directed to be set free forthwith, if not wanted in any other case. The petition stands allowed accordingly.

5. Before we part with this case we may express our anguish at the manner in which representation of the Petitioner remained unconsidered. Firstly, the Superintendent, Central Jail should not have forwarded it to the I.G. Prisons: The representation was addressed to the Secretary, Home (Special) Department, as stipulated in the detention order and, therefore, the same should have been straightaway sent to the Secretary, Home Department which is the consistent practice followed by the authorities of different Jails in the State of Bihar. It is, therefore, understandable as to how in the instant case, representation of the Petitioner was sent to the I.G. Prisons instead. Secondly, it is beyond our comprehension that the representation of the Petitioner remained stuck up in the office of the I.G. Prisons. The representation was meant to be considered by the Home (Special) Department. The same was addressed to the Secretary, Home (Spl) Department, and, therefore it was none of the business of the I.G. Prisons his office to sit over the representation resulting in not only denial of valuable right of the Petitioner but also quashing of the impugned order on that ground alone.

6. We are of the view that the circumstances in which the representation of the Petitioner was sent to I.G. Prisons and turn, not forwarded to the Home (Special) Department, may be inquired into by secretary, Home Department, and suitable action be taken against the person(s) concerned.

7. Let a copy of this order be sent to Secretary, Home Department for the needful.