

(2002) 03 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 163 of 2001

Md. Fahim Khan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2), 17

Citation : (2002) 03 JH CK 0097

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Sanjay Peiprawall, Amitabh Mahadeo Thakur, Abhay Bhath and Sunil Kumar Mahto, for the Appellant; Md. Samim Akhtar, S.C. II, Pramod Kumar Banti and Ajay Kumar Mishra, J.C. to S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—This criminal writ application has been filed under Article 226 of the Constitution by the petitioner Md. Fahim Khan for quashing Annexure-10, an order passed by the District Magistrate, respondent No. 3, whereby and whereunder he has passed an order of detention of the petitioner u/s 12(2) of the Bihar Control of Crimes Act, 1981 and also for quashing the Annexure-12, by which the respondent No. 2, Department of Home. Govt. of Jharkhand, not only confirmed the order contained in Annexure-10 but also passed a detention order against the petitioner till 19.7.2002.

2. Shortly stated the case of the petitioner is that he is a social worker and active member of political party and on many occasions he has protested against the activities of some persons, namely, Sarwasri Jafar Ali, Rashid Ali, Keshar Ali, Sabir Alam, Nishar Ahmad. Sakev Afjal, Jafir, Md. Shalim Ansari, Md. Akhtar, who have a group and are anti-social elements having blessing of higher society. Because of his protest those persons were aggrieved by him and threatened the petitioner with dire consequences. Three cases, namely, Dhanbad (Saraidhela) P.S. Case No. 298 of 2000 instituted on 31.5.2000, u/s 386 of the Indian Penal

Code. Dhanbad (Bank More) P.S. Case No. 303 of 2000 instituted on 1.6.2000, under Sections 25(1-b) and 26 of the Arms Act and Dhanbad (Bank More) P.S. Case No. 307 of 2000 instituted on 2.6.2000, under Sections 307/290/160/34 of the Indian Penal Code, read with Section 27 of the Arms Act, were instituted at the instance of the aforesaid persons within a span period of 3 days. It is stated that in all these cases the aforesaid persons figured either as seizure list witnesses or as eye-witnesses, which according to the petitioner are marked as Annexures-1, 2 and 3 appended with the writ petition and these cases have been instituted in order to humiliate and harass the petitioner. On 31.5.2000 the petitioner was arrested in connection with Dhanbad P.S. Case No. 303 of 2000 and he was taken into jail custody.

3. The grievance of the petitioner is that when he was in jail custody since 2.6.2000 after being arrested on 31.5.2000 till date and though he was also in Jail custody on 4.4.2001 but Dhanbad (Bank More) P.S. Case No. 185 of 2001 was instituted against him by Ekram Ali, in which witnesses were Sabir Alam. Zafar Ali. Zafir and Salim Ansari, who are connected persons in prosecution case vide Annexures- 2 and 3. Again Dhanbad P.S. Case No. 220 of 2001 was instituted on 18.4.2001 under Sections 147/341/342/307/387/323 of the Indian Penal Code against the petitioner at their instance and this case was instituted on 18.4.2001. When the petitioner was in jail custody, these cases were instituted against him by the said group for making out a ground for order of detention under the provisions of the said Act.

4. With regard to Dhanbad P.S. Case No. 307 of 1998 under Sections 302/34 of the Indian Penal Code, the petitioner's case is that he has been acquitted by the competent Court of law and during his custody in jail, Dhanbad (Bankmore) Sanha No. 166 of 2000 was lodged against the petitioner by Jafar Ali. In Dhanbad (Saraidhela) P.S. Case No. 298 of 2000 and in Dhanbad (Bankmore) P.S. Case No. 307 of 2000 the petitioner has already been granted bail either by this Court or by the Court below and in Dhanbad (Bankmore) P.S. Case No. 303 of 2000, he was convicted by the Court below and in that case the petitioner has already completed his conviction of one year and he has not challenged the judgment of conviction. Annexure-7 appended to this writ petition. Again the petitioner is on bail in Dhanbad (Bankmore) P.S. Case No. 185 of 2001 and in Dhanbad (Sadar) P.S. Case No. 200 of 2001 granted by this Court. Besides the aforesaid circumstance, the petitioner has pleaded that his wife, namely, Rizwan Parvin had filed a C.P. Case No. 540 of 2001 against Rajendra Ram, Officer Incharge of Bank More Police Station alongwith Sakir Alam, Wahid Babu, Sahid, Pappu, Asgar, Jaffar Ali, Rustam (Body Guard of Jaffar Ali), Ekram Alam, i.e. against the same group, who has filed case after case against the petitioner. This case has been filed on 12.5.2001, the above mentioned persons had brutally assaulted Sahina Parvin and had taken away cash amount of Rs. 30,000/- alongwith ornaments etc. belonging to the wife of the petitioner from the house of the petitioner, and cognizance has been taken against those persons vide Annexure-8.

5. After respondent No. 3 has passed the order of detention. Annexure-10, the Jail Superintendent, respondent No. 5 has detained the petitioner. It is further asserted by the petitioner that respondent No. 3 after passing the detention order, the petitioner was informed at belated stage that he can file a representation against the order of detention and, thereafter, the petitioner filed his representation, vide Annexure-11. The petitioner also appeared before the Advisory Board and placed his case and submitted that the cases do not come under the purview of the public order, in which he was involved. The Advisory Board has confirmed the order of detention and, accordingly, Annexure-12 came into being.

6. The impugned order has been challenged on the grounds (i) Non-application of mind by the respondent No. 3 as also by the respondent No. 2 (State of Jharkhand), (ii) it was not considered that the detention was passed in the interest of public order and (iii) the detention order was passed after cognizance has been taken on 9.7.2001 by the Court of law against the Officer-In-charge of Bank More police station on the complaint petition filed by his wife and thus, the impugned orders are due to personal grudge and vendetta for wreaking vengeance. As the cases lodged, vide Annexures-1, 2, 3, 5 and 6, within a period of 10 months and even within that period the petitioner was in jail custody, as such, the petitioner has been falsely implicated in all above stated cases in well planted manner. The petitioner is already in jail custody since 2.6.2002 till today i.e. more than 15 months and has served the punishment of conviction that was awarded against him (supra). The order of detention was confirmed after 40 days by the State Government u/s 21(1) read with Section 22 of the Act and that violates the mandatory provisions of law because no reason has been given for passing the order of confirmation. The order of confirmation is a vague order and the circumstance had not been considered by the respondents for the subjective satisfaction of the detinue authority. Further ground is that the petitioner was produced before some officers at Ranchi but it was communicated to him that he is being produced before the Advisory Board but till date no order of Advisory Board was communicated to the petitioner.

7. Subsequently, the petitioner filed a supplementary affidavit dated 20.2.2002, whereby the petitioner made certain correction in reply to the counter-affidavit filed on behalf of the respondent No. 3. In supplementary affidavit dated 19.2.2002, it was also asserted by the petitioner that though the information of the result of the Advisory Board was communicated to the petitioner but it was merely an information but the order was not communicated to him.

8. The respondent No. 4, Superintendent of Police, Dhanbad, has filed a counter-affidavit. It was asserted by him, in paragraph 6, that the petitioner is an anti-social element and there were (atleast 26) cases of murder, extortions, theft against him and the people at large were afraid to open up against him because of the terror unleashed by him and his associates. It is the fear of him and not the respect which looms large at the society. The S.P. also contended that

instead of fighting the evil of society as the petitioner claims, he is rather perpetuating it by breaking down the public order. It was also stated by the S.P. that it is the matter of record that the informant of Dhanbad P.S. Case No. 298 of 2000, Zafar Ali, had been killed by the petitioner's associates and the evidences have come to show that the petitioner has conspired to kill the informant Zafar Ali, which has led to institution of another case being Dhanbad (Bankmore) P.S. case No. 511 of 2002, under Sections 302, 379, 120-B, 34 of the Indian Penal Code and during the course of investigation the name of the petitioner has also transpired vide Annexure-A to the counter-affidavit. The conviction of one year in Dhanbad P.S. case No. 303/2000 under the Arms Act has also been evidenced as his criminal activities. The terror of the petitioner in the locality is so high that the witnesses do not want to come against him and the entire locality are panick stricken and as a result of which the public order of the place is disturbed. While the petitioner was in Jail, he conspired to commit various offences, for which different cases have been instituted against him and those cases have been properly investigated and the charge sheets have been submitted against him. The S.P. has admitted that in order to prevent the break down of public order in the event of the petitioner coming out of jail, he has recommended to pass an order of detention against the petitioner. Therefore, the prayer is to reject the writ petition filed on behalf of the petitioner.

9. The District Magistrate, respondent No. 3 has also filed a counter-affidavit with regard to the writ petition and supplementary affidavit. He defended the order of detention stating that the petitioner Md. Fahim Khan is an anti-social element and it has become essential to order for his detention under the Act in order to prevent him from acting in the manner prejudicial to maintenance of public order in the town of Dhanbad. He further stated that after receipt of the report from the Superintendent of Police, Dhanbad, he being fully satisfied that the public order could not be maintained without passing the impugned order and, hence, he passed the impugned order, and on the same day the order was communicated to the petitioner informing him that he could make a representation to the Home Secretary, Government of Jharkhand, Ranchi. Accordingly, the representation was made and after due consideration it was rejected by the State Government and this order was communicated to the petitioner vide Home Department Letter No. 1818 dated 7.8.2001 by the Deputy Secretary, Home Department, through Superintendent of Jail, which was received by the petitioner on 8.8.2001. By Letter dated 3.8.2001 the petitioner was advised to be produced before the Advisory Board on 9.8.2001 and on 31.8.2001 the order of detention was confirmed by the Advisory Board. The District Magistrate, respondent no. 3, has further contended that the petitioner has terrorised not only the public of Dhanbad Township Area, but sub-areas also and his criminal activities terrifically rose above as the petitioner is the gang leader and commits offences detailed under Chapter-XVI and XVII of the Indian Penal Code and he was satisfied that the contention was necessary in order to break down of the public order. His activities within three days i.e. from 31.5.2000 to

2.6.2000 show that there had been continuous and non-stop criminal acts performed by the petitioner and his associates. His associates are also such hardened criminals that they at once commit heinous offences at the instance of the petitioner, even though the petitioner was in jail. Therefore, the respondent's prayer is to reject the writ application filed on behalf of the petitioner.

10. Two grounds i.e. non-application of mind by the respondent No. 3 and the order was not passed in the interest of public order, are considered first.

It is worthwhile to reproduce the order of detention passed by the respondent No. 3 District Magistrate, which reads" thus :

DETENTION ORDER

No. 3262/C

Dated 20/7/2001

Superintendent of Police, Dhanbad vide his letter No. 127/DCB dt. 3.3.2001, 244/ DCS dt. 19.4.2001, 332/DCB dt. 11.5.2001 and 596/DCB dt. 10.7.2001 enclosing all relevant documents submitted proposal for detention of anti-social element Md. Fahim Khan S/O Late Safiq Khan of Kamar Makhdumi Road. Wassypur, P.S. Bank, More, Dist. Dhanbad under Crime Control Act, 1981 (Act 7/81). After being satisfied from the facts and circumstances mentioned in the police report, order of detention is being passed against Md. Fahim Khan, S.P. has informed that detainee is likely to be released on bail.

Now, therefore, in exercise of power conferred by Sub-section (2) of Section 12 of the Bihar Control of Crime Act, 1981 (Bihar Act 7/81) read with notification No. 1304 dt. 27.6.2001 of the Govt. of Jharkhand Home Deptt., I hereby direct that said Md. Fahim Khan be detained. He shall be placed in detention in Dhanbad District Jail and classified as "C" and division 3rd (III)".

11. The questions are whether this detention order itself gives the sufficient information to the detainee for his detention and whether this order tells the detainee prima facie that why he has been detained. When an order of detention has been served, a detainee is entitled to know prima facie the purposes of his detention. The purposes will precede and the grounds will follow. If the purpose is not clear, then the entire ground, even very weighty, will make the order of detention vague. On perusal of the detention order, as quoted above, it appears that nowhere in the order it has been stated that the detention is being made in the interest of public order. It simply reads that the petitioner is detained in exercise of the power u/s 12(2) of the Bihar Control of Crimes Act by the District Magistrate. Thus, this order simply informs the petitioner that he is an antisocial element and he is detained under the aforesaid provisions of the Act. Two provisions of the Act are thus communicated by this order to the petitioner. Section 12(2) of the Act is a provision giving power to the District Magistrate in pursuance of Section 12(1) of the Act. Section 12 of the Act clearly provides that the State Government, on being satisfied with respect to any person that with a

view to preventing him from acting in any manner prejudicial to the maintenance of the public order and there is reason to fear that the activities of anti-social elements cannot be prevented otherwise than by the immediate arrest of such person, may make an order directing that such anti-social elements be detained. Before passing the impugned order, the detaining authority must consider whether or not the detention is necessary to maintain the public order. This is an aspect of the application of mind while passing the order. No doubt, such consideration can be there in the mind of the detaining authority while passing the order, but application of mind not only should be a mental exercise but it should also reflect in the order itself so that the application of mind is not only evidenced, but it also avoids any type of vagueness in the impugned order and no prejudice is caused, even a willful prejudice, to the detainee. As stated above, the very purpose for which the detention order has been passed has not been recorded in the impugned order, either in Annexure-10 or Annexure-12. It makes the order vague, because on prima facie reading of this order, the petitioner does not get an immediate information that his arrest has been to maintain the public order. If he does not know why he has been arrested then in that circumstance, he is prejudiced in his defence.

12. Now the question is whether by mentioning the section under which the arrest has been made complies the provision of law and removes the vagueness and repels the allegation of non-application of mind. It is true that ignorance of law is no excuse. A common man knows that there is a law that a person can be detained if the public order is threatened, but this knowledge will not go to that extent that under which section of which Act, the detention of those only fall in the domain of the Court and advocate to know which Act and which section provides what. So merely by mentioning the section the object of the law is not complied with.

13. The word, "communication" as used in Section 17 of the Act is a strond word. It means that sufficient knowledge of the basic facts should be supplied effectively and fully to the detainee in a language which he understands. The whole purpose of communication is to enable him to make a fruitful and effective representation. If the writings are there but they have not given the real communication then It is against the constitutional mandate of Article 22(5) of the Constitution.

14. From the discussions aforesaid, it is clear that the detention order as contained in Annexures-10 & 12 are vague because of non-mentioning of the object of detention and since the object is missing in the order, it is likely to prejudice the petitioner, because it suffers from vagueness and evidences non-application of mind on the part of the respondent authorities.

15. On this short ground, the writ application is allowed and the impugned detention orders as contained in Annexures 10 and 12, are quashed. The detainee/petitioner is directed to be released forthwith, if not wanted in any other case(s).