

(1986) 04 PAT CK 0053

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 196 of 1985 (R)

Munna @ Muneshwar Sao

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 15-04-1986

Acts Referred:

Constitution of India, 1950 — Article 22, 22(5)

Citation : (1986) PLJR 1158

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : P.S. Dayal, A.S. Dayal. P.K. Sahay and A.K. Kashyap, for the Appellant; S.K. Chattopadhyaya, G.P.I. and Gopal Choudhary, J.C. to G.P.I., for the Respondent

Judgement

U.P. Singh J.

1. The petitioner has challenged the order of detention passed by respondent no. 2 u/s 12(2) of the Bihar Crime Control Act, 1981 (in short "the Act"). The grounds served on the detenu are contained in Annexure 2 and the order of confirmation of the detention was passed by the State Government on 9th August, 1985 which is continued in Annexure 4. The detention has been confirmed till 16.6.1986. The sole contention raised by Mr. Dayal, the learned counsel appearing for the petitioner is that the order of confirmation was passed on 9.8.1985 without considering the representation filed by the petitioner. Since, this contention of Mr. Dayal is being upheld, it is not necessary to go into the details of the grounds mentioned for detention and examine its validity and it is not necessary to consider the other questions raised by him that the grounds are stale and the incidents mentioned therein do not affect the public order.

2. In paragraph 5 of the petition, it is categorically stated by the petitioner that although his representation was sent to the State Government on 23.7.1985 but till the date of filing of the Habeas Corpus petition on 8.10.1985, the petitioner was not communicated whether his representation was rejected or accepted. In

the counter affidavit filed on behalf of respondent no. 1 (Department of Home, Bihar, Patna), it is admitted that the representation of the petitioner was received in the department of Home in the evening of 25.7.1985 and the same was placed before the Advisory Board on 26.7.1985 along with other connected papers and, therefore, the Government had no occasion to scrutinise or consider the representation of the petitioner. According to the procedure mentioned in paragraph 6 of the counter affidavit, in such matters, the papers placed before the Advisory Board are not returned back to the Home department and only the opinion of the Advisory Board is forwarded. Due to paucity of time, the other typed copies could not be made and the original copy of the representation was forwarded to the Advisory Board. The opinion of the Board was submitted on 29.7.1985. The statement made in paragraph 9 of the counter affidavit is unequivocal in terms, wherein, it is stated that except the opinion of the Advisory Board, nothing was received back in the Office of respondent no. 1. namely, the Home department and, as such, in the present case, the representation of the petitioner was not returned to the department of Home. The result being that the representation of the petitioner was not considered by the Government.

3. In view of these admitted facts, the representation of the petitioner was not considered by the Government. There is thus clear violation of Article 22(5) of the Constitution of India.

4. Reference may be made to a decision of the Supreme Court in the case of Rahamatullah v. State of Bihar (A.I.R. 1981 Supreme Court, 2069) wherein it has been held that:

the non-consideration or unreasonably belated consideration of the representation tantamounts to non-compliance of sub-Art (5) of Article 22 of the Constitution :

The law is well settled that in case of Preventive detention of a citizen, the obligation of the appropriate Government is two-fold : (i) to afford the detenu the opportunity to make a representation and to consider their representation which may result in the release of the detenu, and (ii) to constitute a Board and to communicate the representation of the detenu along with other materials to the Board to enable it to form its opinion and to obtain such opinion. The former is distinct from the latter. As there is two-fold obligation of the appropriate Government, so there is a two-fold right in favour of the detenu to have his representation considered by the appropriate Government and to have the representation once again considered by the Government in the light of the circumstances of the case considered by the Board for the purpose of giving its opinion.

In the facts and circumstances of the present case, it is nowhere stated that the representation of the petitioner was considered by the State Government. There is rather a positive averment in the counter affidavit filed on behalf of the

department of Home that the representation of the petitioner was not considered by the State Government. Thus, there was no independent consideration of the representation by the State Government and, as such, there is clear violation of Article 22(5) of the Constitution. That being the position, the order of detention contained in Annexure 1 is quashed and the detenu shall be set at liberty forthwith, if not wanted in any other case.