
(2005) 02 PAT CK 0057
In the Patna High Court
Case No : Cr WJC No. 30 of 2005

Pappu Kumar Singh @ Pappu Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12, 12(2)
Penal Code, 1860 (IPC) — Section 414

Citation : (2005) 2 PLJR 17

Hon'ble Judges : S. Mukherjee, J; M.L. Visa, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ application by petitioner has been filed for issuance of a writ in the nature of habeas corpus to declare the detention of petitioner u/s 12 of Bihar Control of Crimes Act, 1981 (in short "the Act") as illegal and directing the respondents-authorities to release the petitioner from illegal detention forthwith and for issuance of an appropriate writ to quash the order of detention contained in Memo No. 1504 dated 15.2.2004 passed by District Magistrate, Patna and further to quash subsequent letters and memos by which detention order has been communicated to the petitioner, detention order has been approved by Government, representation of petitioner has been rejected and State Government has been pleased to confirm the detention order directing that he will remain under detention till 15.10.2005 and for issuance of any appropriate writ, order of direction for which the petitioner is found legally entitled in this case. The brief facts of the matter are that Subdivisional Police Officer, Danapur vide his Memo No. 3077 dated 29.9.2004 gave a written information to District Magistrate, Patna through Senior Superintendent of Police, Patna to the effect that the petitioner is a veteran criminal having indulged in nefarious activities including murder and rangdari etc. The District Magistrate, Patna, on the basis of aforesaid report, decided to detain the petitioner by his Memo No. 1505 dated 15.10.2004 (Annexure-1) and this order was communicated to the petitioner

alongwith the report of Subdivisional Police Officer, Danapur. After communication of the aforesaid order, the petitioner filed a representation before Deputy Secretary, Department of Home (Police) through Jail Superintendent asking for supply of papers which were not supplied to him including the first information reports of those cases mentioned in the grounds of detention (Annexure-2). The order of detention of petitioner was approved by Government and he was directed to be detained till 15.10.2005 and order to this effect was issued vide letter No. 11419 dated 26.10.2004 (Annexure-3). The representation of petitioner against his detention was rejected by the Government and it was communicated to petitioner vide Memo No. 11924 dated 5.11.2004 (Annexure-4). The under Secretary to the Government vide his letter No. 12798 dated 6.12.2004 communicated the petitioner that Advisory Board, in its opinion, has held that sufficient grounds exist for his detention and, therefore, the State Government was pleased to confirm the order of his detention passed by District Magistrate and petitioner will remain in detention till 15.10.2005.

2. The case of petitioner is that he is a Member of a Political Party and was an adversary to the Ruling Party and as such he has been detained without any valid reason and his period of detention has not been mentioned in the original order which is a mandatory requirement and non-compliance of this requirement renders the detention of petitioner illegal and void. The further case of petitioner is that the satisfaction of detaining authority has been reached on the basis of report of Subdivisional Police Officer, Danapur but the documents enclosed with the report of Subdivisional Police Officer, Danapur did not contain the first information reports lodged against the petitioner and the detaining authority has reached the conclusion without giving effective consideration to the allegations levelled against the petitioner and the fact petitioner in some cases has not been considered and detention order under the of grant of bail to Act amounts to dual custody in jail when detention order was served on him. The further case of petitioner is that the detention order does not disclose that the District Magistrate, Patna was aware of the fact that the petitioner was already in jail and petitioner has deliberately been detained so that he may not come out of Jail and fight the ensuing election in a proper manner because petitioner is intending to fight the election against the ruling party. The petitioner has prayed for declaring his detention as illegal and commanding and directing the respondents-authorities to release him.

3. Respondents No. 1 to 4 have appeared and have filed counter-affidavit. Respondent No. 5 has also appeared and has filed a separate counter-affidavit. The case of respondents No. 1 to 4 is that detention order dated 15.10.2004 passed u/s 12(2) of the Act was served on petitioner on 16.10.2004 and the same was approved by the State Government on 23.10.2004 and this information was communicated to petitioner vide letter dated 26.10.2004. Their further case is that representation dated 20.10.2004 submitted by petitioner was received in the department on 25.10.2004 and a report was called by the department vide letter dated 27.10.2004 from the District Magistrate, Patna and

he submitted his comments vide his letter dated 28.10.2004 and representation was considered at different levels and the same was finally rejected and this information was communicated to petitioner vide letter dated 5.11.2004 (Annexure-4 of the writ application). According to them, petitioner is a hardened criminal and his activities are prejudicial to the maintenance of public order and he was demanding ransom money from jail custody and has made life of people of society miserable and the detaining authority after being fully, satisfied that the petitioner is in jail custody and was trying to be enlarged on bail passed the detention order. In the counter-affidavit filed on behalf of respondent No. 5, the District Magistrate, Patna, it is stated that letter dated 29.9.2004 was sent by Subdivisional Police Officer, Danapur and not by Subdivisional Officer, Danapur, as stated in the application of petitioner and detention order was passed after being fully satisfied by detaining authority that the petitioner is at present in jail custody and is trying for bail and likely to be released on bail and there is no other way to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order and detention order was passed after taking into consideration the recommendation and the materials in support of that and after being fully satisfied and the petitioner has been supplied all the relevant materials which were considered by the detaining authority before passing the detention order. It is further stated that respondent No. 5 was fully aware of the fact that the petitioner is in jail custody and is trying for bail and is likely to be released on bail. Respondents have prayed for rejecting the prayer of petitioner.

4. Mr. Ganesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner has challenged the detention order on three grounds. Firstly, he has argued that the detention order is completely silent on the point of awareness of detaining authority that petitioner was in jail and he was to be released on bail. According to him, the grounds of detention, annexed with detention order, themselves show that the petitioner was arrested on 16.10.2003 in Fatuha Police Station Case No. 137 of 2003 u/s 414 of Indian Penal Code and detention order has been passed on 15.10.2004 meaning thereby on the day when detention order was passed, petitioner was already in custody. According to him, materials suggesting the awareness of detaining authority that the petitioner is in custody and he was to be released on bail are completely lacking in the detention order and for this reason, the order cannot be upheld. From the perusal of detention order (Annexure-1) and its annexures, we find that it is true that summary of five criminal cases, besides criminal history showing his involvement in six other criminal cases, is given and in respect of only one case which has been registered as Bihta Police Station Case No. 24 of 2004, it is stated that the petitioner is trying for bail whereas for other cases, there is no such mentioning but then such mentioning even in one case to the effect that the petitioner is trying for bail clearly indicates that detaining authority was fully aware of the fact that petitioner was in custody on the day of passing the detention order. Mr. Singh has argued that even assuming the fact that the detention order shows that detaining authority was fully aware of the fact that petitioner was in custody

even then the detention order has to be held invalid only on the ground that it does not show that detenu could be released on bail. In support of his argument, he has relied upon a decision of the Apex Court in the case of N. Meera Rani Vs. Government of Tamil Nadu and Another, and has submitted that in that case only on the ground that there was no indication in the detention order that detaining authority considered it likely that the detenu would be released on bail, the detention order was held to be invalid for this reason alone. In the present case, the detention order clearly states that after considering the report of Senior Superintendent of Police, Patna, the detaining authority became satisfied that the petitioner is a notorious and habitual criminal and his activities were resulting in adverse affect on the public administration and it was necessary to detain him in order to save public life and public administration. The report of Senior Superintendent of Police is the annexure of this detention order which has been filed by petitioner himself and this report shows that in Bihta Police Station Case No. 188 of 2002, petitioner has been enlarged on bail but in Bihta Police Station Case No. 292 of 2003, his prayer for bail had been refused and in Bihta Police Station Case No. 24 of 2004, he was trying for bail and although his prayer for bail in this case has been rejected from the Court of Additional Chief Judicial Magistrate but there was rumour in Bihta Bazar that petitioner will soon come out from jail on bail and this has caused terror among the general public and this further shows that presently petitioner is in Beur Jail. Since detection order shows that this report was considered by detaining authority and, as stated above, this report shows that petitioner; was in custody and he was trying for bail, the argument on behalf of the petitioner that the detention order does not show the awareness of detaining authority that the petitioner is in jail and is to be released on bail is without any basis.

5. The next ground on which the detention order has been challenged by the petitioner is that all necessary papers on the consideration of which the District Magistrate, Patna passed detention order were not supplied to petitioner. Mr. Singh has submitted that only supervision notes, first information reports and part chargesheets of the cases which are mentioned as grounds of detention of petitioner were supplied to petitioner and statements of witnesses examined during investigation in all these cases were not supplied in spite of the fact that the investigation of some of the mentioned cases took considerable time. The report of Subdivisional Police Officer, Danapur sent to District Magistrate through Senior Superintendent of Police, Patna by his Memo No. 3077 dated 29.9.2004 gives the summary of criminal cases and its annexures are first information reports, supervision notes and chargesheets of these cases. In the supervision notes besides summary of facts of the case and apart from the description of place of occurrence, there is reference of statements of witnesses examined during investigation in each case. In presence of all the details, the argument advanced on behalf of the petitioner that he was not supplied the details of statements of witnesses recorded during investigation of each case does not affect the detention order for which the only requirement is the satisfaction of

the detaining authority. We fully agree with the submission of Mr. Singh that satisfaction of detaining authority must be based on some materials. In the present case, we find that the materials which were placed before the District Magistrate, in the report of Subdivisional Police Officer through Senior Superintendent of Police giving the history of each case, annexing first information report, supervision note and chargesheet of each case were sufficient for taking a decision of the detaining authority on the point of passing detention order.

6. The last ground which Mr. Singh has argued is that for the basis of detention order, five criminal cases have been mentioned and at serial five, there is reference of Bihta Police Station Case No. 24 of 2004 dated 22.1.2004 but then detention order has been passed on 15.10.2004. According to Mr. Singh, there is no proximity in the date of this case in which petitioner is said to be lastly involved and the date of passing detention order and there is a big gap between the two. Relying upon a decision of Supreme Court in the case of Sk. Serajul Vs. State of West Bengal, , it has been argued that absence of any satisfactory explanation for delay will lead to an inference that subjective satisfaction of detaining authority was not genuine and real. In our opinion, the facts of the present case are quite different from the facts of the case relied upon by Mr. Singh. In that case, order of detention was passed after seven months of last prejudicial activities and detenu was arrested after six months of the passing of detention order and there was no satisfactory explanation for delay in securing the arrest of petitioner. Considering all these facts, the Apex Court observed as follows : "It would be reasonable to assume that if the District Magistrate of Burdwan was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from going in a prejudicial manner, he would have acted with greater promptitude both in making the order of detention as also in securing the arrest of the petitioner, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course, when we say this, we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances."

In the present case, there is nothing like that the detention order was passed and after much delay, the petitioner was arrested. Admittedly, on the date of passing the detention order, petitioner was already in custody. In the result, we find no merit in this application which is, accordingly, dismissed.