

(2011) 06 JH CK 0148

In the Jharkhand High Court

Case No : Writ Petition (H.B.) Cr. No. 44 of 2011

Prabhash Singh @ Nunu Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(1)
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 —
Section 3(1)

Citation : (2011) 06 JH CK 0148

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : P.P.N. Roy, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the Petitioner and the Learned Counsel for the State.
2. The Petitioner initially preferred a writ petition to challenge the order passed by the Deputy Commissioner-cum-District Magistrate, East-Singh hum, Jamshedpur, Annexure-1, dated 12.01.2011 by which the District Magistrate opined that detention of the writ Petitioner is essential in view to prevent him in acting in a manner prejudicial to public order and there is a reason to fear that activities of anti-social elements cannot be prevented otherwise than by immediate arrest of the Petitioner by exercising power under Sub-Section 1 of Section 12 of the Bihar Control of Crimes Act, 1981.
3. It is submitted that during pendency of this writ petition the State Government passed the order on 08.03.2011 approving the order passed by the Deputy Commissioner-cum-District Magistrate, East-Singh hum, Jamshedpur dated 12.01.2011.
4. The Petitioner has challenged the said order by moving I.A. No. 882 of 2011,

the subsequent order passed by the State Government on 08.03.2011 also with a plea that by this order dated 08.03.2011 the State Government has approved the illegal order passed by the said authority.

5. Learned Counsel for the Petitioner has relied upon a judgement of the Hon''ble Supreme Court in support of his argument that the detention order cannot be made for the purpose of circumventing the expected order of the Court granting bail and the object of detention order has to prevent the person from indulging in prejudicial and antisocial activities and it cannot be to facilitate him in a criminal case nor it can be a punitive measure.

6. It is submitted that in fact the Petitioner is alleged to have been indulged in four criminal cases out of which in three criminal cases he was already granted bail by the Court and in fourth after the order passed by the original detaining authority the Petitioner was granted bail and in the impugned order it has been clearly mentioned by the original authority himself that in case the Petitioner will be released on bail then it may be adverse to the prosecution and thereby the order has been passed to facilitate the prosecution against the Petitioner. It has also been submitted that the reasons given in the impugned order dated 12.01.2011 are not sufficient and if any one of the ground is found to be wrong then entire order goes.

7. Learned Counsel for the Petitioner also relied upon the case of Kuso Sah Vs. The State of Bihar and Others, and the judgement of the Patna High Court delivered in the case of Santosh Kumar Pathak @ Santosh Kumar v. The State of Bihar and Ors. reported in 1989 P.L.J.R. 492 in support of the above contention.

8. We considered the submission of the Learned Counsel for the Petitioner and perused the facts of the case in the light of the decision rendered by the Hon''ble Supreme Court as well as in the light of the provisions made in the Bihar Control of Crimes Act, 1981.

9. The Bihar Control of Crimes Act, 1981 which is adopted by the State of Jharkhand, empowers the State Government to detain a person under Sub-Section 1 of Section 12 on the ground that in a view to prevent a person from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of antisocial elements cannot be prevented otherwise than by the immediate arrest of such person.

10. The complete procedure has been provided in the Act of 1981 and the Hon''ble Supreme Court in the case of Bal Chand Bansal Vs. Union of India (UOI) and Ors, while considering the matter under the provision of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 while dismissing the plea of the detenu observed that the order could not have been passed for the purpose of circumventing the expected bail order and object of detention has to be prevention of a detenu from indulging in activities prejudicial to the conservation of foreign exchange resources, and not to facilitate his trial in a criminal case nor as a punitive measure. The case of Bal

Chand Bansal (Supra) was a case relating to violation of a foreign exchange and if we examine the reasons given in the present facts and circumstance of the case then we are of the firm opinion that in the present case in three cases bail was granted to the Petitioner and in the fourth case the bail was yet not granted but ultimately it was granted. The granting of bail in a criminal case itself cannot be a ground to hold that in all cases the detention order has been passed only to circumvent the bail and to facilitate the criminal trial against the proposed detenu or detenu. It depends upon the facts of each case. In the case when satisfaction is recorded by the authority concerned after taking note of the relevant facts and after drawing a conclusion in consonance to Sub-Section 1 of Section 12 of the Bihar Control of Crimes Act, 1981 and thereafter if it is observed that in addition to above there may be possibility of tampering of witnesses by the detenu then that apprehension of the natural consequences cannot vitiate subject to satisfaction of the authority.

11. Therefore, the facts of present case clearly distinguished the arguments advanced by the Learned Counsel for the Petitioner. It is also relevant that in the case of Bal Chand Bansal (Supra) the challenge of the detention order was rejected by the Single Bench and the Division Bench of the High Court and by the Hon"ble Supreme Court.

12. In the case of Kuso Sah (Supra) the Hon"ble Supreme Court observed that we find it impossible to see the facts of the case having any impact on the public order and Hon"ble Supreme Court considered in detail the concept of law & order/ order and the security of the State while dealing with the matter on the basis of the facts which were before the Hon"ble Supreme Court. The Hon"ble Supreme Court in the said case also considered the other judgements of the Supreme Court and reached to the conclusion that detention order has been passed with a view to prevent the Petitioner from acting in a manner prejudicial to the maintenance of public order and found that two out of three grounds mentioned by the detaining authority is irrelevant the entire order of detention is illegal.

13. Here in the instant case, if we look into the facts given by the detaining authority it is clearly relevant that the allegations against the Petitioner in all those cases were with respect to the serious crimes and certainly they have direct nexus with the finding recorded by the detaining authority whereby it has been held that in case the detenu will be allowed to remain outside the jail then it will certainly affect the public order as well as peace and there will be increase in the criminal activities and while observing so only it has been observed that the release of the Petitioner may also result in the demoralisation of the witnesses in the criminal cases.

14. Therefore, if the judgements referred above are examined in the light of the facts of the case, we are of the firm opinion that there is no illegality in the order passed by the detaining authority as well as by the State Government.

15. In the facts and circumstances of the case we find no merit in this writ

petition and the same is rejected.