
(2023) 07 SC CK 3344

In the Supreme Court Of India

Case No : Civil Appeal No. 4324 Of 2023 (Arising Out Of Special Leave Petition (Civil) No. 5331 Of 2023)

Prakash Chandra Yadav @ Mungeri Yadav

APPELLANT

Vs

State Of Jharkhand & Ors

RESPONDENT

Date of Decision : 10-07-2023

Acts Referred:

Constitution of India, 1950 — Article 22Jharkhand Control of Crimes Act, 2002 — Section 2(d)Arms Act, 1959 — Section 25, 26, 27, 28, 29

Citation : (2023) 07 SC CK 3344

Hon'ble Judges : Aniruddha Bose, J;Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : Neeraj Kishan Kaul, Vimal Kirti Singh, Siddhartha, Pooja Dhar, Aashima Thukral, Nandita Seth, Namisha Chaddha, Arunabh Chowdhury, Pragya Baghel, Rajiv Shankar Dvivedi, Tulika Mukherjee, Zain A. Khan, Abhishek Roy, Karma Dorjee, Anniruddha Mahadevan Sethi

Final Decision : Allowed

Judgement

Leave granted.

This appeal has been filed against an order of the Division Bench of Jharkhand High Court dated 02.03.2023 in LPA No. 568 of 2022 of the appellant, which had confirmed the order of the learned Single Judge dated 02.11.2022 in W.P. (Crl) No. 405 of 2022, thereby upholding the detention of the appellant, who was detained under the provisions of Jharkhand Control of Crimes Act, 2002(hereinafter referred to as 'the Act').

The Act deals with the "Externment" and "detention" of "anti-social elements" in the State of Jharkhand, subject to the procedure given in the Act. Under the provisions of the Act, the State Government can detain an "Anti-social element", in order to prevent him from indulging in his "activities". An "Anti-social element" has been defined under Section 2 (d) of the Act as follows:

(d) "Anti-social element" means a person who-

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or

(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or

(v) who has been convicted of an offence under sections 25,26, 27, 28 or 29 of the Arms Act of 1959.

The necessary facts of the case are that the appellant was served a copy of the detention order dated 8th August,2022 passed by the District Magistrate Sahebganj, while the appellant was in judicial custody in Rajmahal prison District Sahebganj. The detention order mentions the grounds for detaining the appellant, and gives detail of 18 pending cases where the appellant is an accused. These are a wide range of cases, from causing simple hurt to extortion and murder.

Against this order, the appellant filed a representation which was handed over to the jail authorities at District-Sahebganj on 18.08.2022 (the State denies this claim). This representation, according to the appellant, was sent, on his behalf, through e-mail and via Indian Post Consignment through Sahibganj District Court on 19.08.2022 which was received by the Government of Jharkhand on 26.08.2022. Meanwhile the State Government through the Department of Home, Prison and Disaster Management under Section 12(3) of the Act approved the detention order on 12.08.2022. For continuation of the detention, the opinion of the Advisory Board was sought by the Government. The papers were sent to the Advisory Board within three weeks of the detention order and the Advisory Board took a decision on it on 2nd September, 2022. The decision of the Advisory Board was that there were sufficient materials on record for extension of the period of detention beyond the period of three months. Based on the report of the Advisory Committee, the State Government subsequently passed an order on 15th September, 2022 confirming the initial detention order. Subsequently, vide order dated 07.11.2022, the order of detention dated 08.08.2022 was extended for a further period of three months from 8th November, 2022 to 7th February, 2023 and by order dated 07.02.2023 (Pg. 374) for a further period of six months from 7th February, 2023 upto 7th August, 2023.

The main grounds for challenging this order before this Court as urged before us

by Senior Advocate Mr. Neeraj Kishan Kaul, are that while the Advisory Board took its decision under Section 19 of the Act, the representation which the appellant had earlier made on 18th August, 2022 was not placed before the Advisory Board, and therefore the decision of the Board is in violation of Section 19 of the Act. The provisions of Section 19 relied upon by the appellant of are being reproduced below:

"Section 19. Reference to Advisory Board. - Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under Section 18, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by the District Magistrate mentioned in sub-section (2) of Section 12 also the report by such officer under sub-section (3) of that section."

(emphasis supplied)

A bare perusal of the aforesaid provision shows that within three weeks of the detention, the Government has to place before the Advisory Board, the grounds on which the order of detention has been made, along with the copy of the representation, if any, made by the detainee. It is based on this material that a decision has to be taken by the Advisory Board. The admitted position is that there was no representation before the Advisory Board when the matter was referred to it under Section 19 of the Act and the decision taken by the Advisory Board on 2nd September, 2022 was therefore without consideration of the representation of the detainee. The reply of the Government here is that this was so as there was no representation of the detainee, till that date. The detainee, however, would argue that the representation was been made by him on 18th August, 2022 and it was given to the jail authorities on that date. There was endorsement of the jail authorities dated 18th August, 2022 on this representation. Not only this, the appellant has also shown before this Court the counter affidavits filed by Sub-Divisional Police Officer (S.D.P.O.) before the Division Bench of the High Court (Pg. 360-361) wherein the Sub Divisional Police Officer (S.D.P.O) has admitted on oath that such a representation was made by the appellant before the jail authorities on 18th August, 2022. The admission is at Pg.360 Para'19' as below:

"19. That with regard to para-3 it is stated that it is important to mention herein that detainee had preferred representation on 18.08.2022, addressed to the Principal Secretary, Department of Home, Government of Jharkhand, Ranchi through Superintendent, District Jail, Sahebganj which was accordingly been forwarded for before the I.G., Prison, Jharkhand vide Letter No. 747/Jail dated 18.08.2022 through email at 02:18 hrs.

Photocopy of the representation preferred by Prakash Chandra Yadav and

Photocopy of email dated 18.08.2022 are hereby annexed and marked as Annexure-F & G."

The above averment also discloses that when the representation was made by the appellant before the jail authorities on 18.08.2022, the jail authorities had forwarded the said representation vide an E-mail dated 18.08.2022. Therefore, the contention of the respondent-State that there was no representation on record, cannot be accepted. There is sufficient proof before this Court to safely presume that the representation was made by the detainee/appellant on 18.08.2022.

The Division Bench of the High Court has not accepted this contention of the appellant, largely on the ground that in order to verify the fact of the detainee filing his representation on 18.08.2022, the jailor of the concerned jail ought to have been made a party. We are, however, not in agreement with this line of thought as we have absolutely no doubt in our mind that as per the given facts and circumstances of the case and considering that the detainee was in jail, he has been able to satisfy this Court that there was a representation placed before the authorities on 18th August, 2022.

In view of the above facts and circumstances of the present case, we have no hesitation to hold that the appellant had made his representation before the authorities on 18.08.2022. The decision was taken by the Advisory Board on 2nd September, 2022 without considering the representation of the appellant. To that extent, the decision of the Advisory Board and subsequent decision of the State Government extending the period of detention vide order dated 7th November, 2022 and 7th February, 2023, becomes bad, as the statutory procedural requirement have not been complied with. For this reason, not only the decision of the Advisory Board under Section 19 is in violation of the procedure but the decision of the State Government dated 10th November, 2022 rejecting the representation of the appellant is also highly belated, and for this reason as well the extended detention is violation of the Act and the Constitution of India.

We must add that the non-consideration of the representation by the Advisory Board violates an important right given to the detainee, for the reasons that in case the Board leans favourably for the detainee, the Government has no option but to release the detainee. Section 21 of the Act reads as under:

"Section 21. Action upon the report of the Advisory Board.-

(1) In any case where the Advisory Board has reported that there is, in its opinion sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the Government shall revoke the detention order and cause the person concerned to be released

forthwith."

(emphasis supplied)

It is significant to note that the word used in subsection (1) of Section 21 is 'may', whereas the word used in sub-section (2) of Section 21 is 'shall'. In other words, in case the report of the Advisory Board gives an opinion that there are sufficient cause for detaining the person, the Government may or may not confirm the detention. But, in case a report of the Advisory Board says that there are insufficient grounds for detaining a person, the Government has no choice but to revoke the detention order and release the detainee forthwith. Therefore, the report given by the Advisory Board is extremely important for the detainee for the reasons that if he is able to satisfy the Advisory Board that there are no sufficient grounds for his detention and the Advisory Board gives a favourable opinion on that then the detainee has to be released. In this case, however, although there is a statutory requirement for the Government to place the representation of the detainee before the Advisory Board, yet it has not been done and therefore there is a clear violation of the statutory provision i.e. Section 19 of the Act, and more importantly of Clause 4 (a) of Article 22[22. Protection against arrest and detention in certain cases :- XXX XXX (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention: Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7).] of the Constitution of India, since the law under which the Appellant has been detained cannot continue beyond a period of three months, without the report of the Advisory Board.

On the delayed decision of his representation by the Government. Reliance has been placed by the appellant on *Jayanarayan Sukul v. State of W.B.*: (1970) 1 SCC 219. The observations of this Court in the above Judgement at Para 18 are reproduced below:

18. It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities.

All laws on preventive detention are necessarily harsh. They curtail personal liberty of an individual, who is kept behind bars without any trial. In such cases, procedure is all a detainee has. Laws of preventive detention must therefore be strictly applied. In *Union of India & Anr. v. Chaya Ghoshal & Anr.* (2005) 10 SCC 97, this Court observed as under:-

"15..... But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory.

Learned counsel for the Jharkhand Government, in the end, would argue that in any case, there are no grounds for the challenge of the initial detention order dated 8th August, 2022. The challenge is only to the subsequent orders which extended the period of detention i.e. orders dated 7th November, 2022, and 7th February, 2023, by which the detention has been extended. Therefore, if at all it makes only the extension of detention bad and not the initial detention.

It is true that in the case at hand there is no real challenge to the initial detention order dated 08.08.2022. The challenge is clearly to the subsequent orders and the procedural flaws made by the Government in passing the subsequent orders for extension of the period of initial detention. We have already held that there were procedural flaws in the orders, but this makes only the extended period of detention bad, not the initial detention. To this extent we are in agreement with the learned counsel for the State of Jharkhand, Shri Arunabh Chowdhury, AAG, in similar circumstances this Court has thus held the extended period of detention to be violative of the law and not the initial detention order. The Constitution Bench of this Court in *K.M. Abdulla Kunhi v. Union of India* (1991) 1 SCC 476 has held that the unexplained delay in disposal of the representation of the detainee would be violative of the constitutional imperative and it would render the continued detention unauthorized and illegal and therefore what has to be set aside is the extended period of detention. This was subsequently followed in *Meena Jayendra Thakur v. UOI*: (1999) 8 SCC 177; *Sayed Abul Ala v. UOI*: (2007) 15 SCC 208 and *Abdul Nasar Adam Ismail v. State of Maharashtra & Ors.*: (2013) 4 SCC 435.

Consequently, we hold that the extended period of detention of the appellant beyond the period of three months is unauthorized and illegal. The orders dated 7th November, 2022 and 7th February, 2023 which extended the detention period are hereby quashed. The orders of the Division Bench of Jharkhand High Court dated 02.03.2023 in LPA No. 568 of 2022 and 02.11.2022 of learned Single Judge in W.P. (Crl) No. 405 of 2022 are also set aside.

The present appeal stands allowed. The appellant is directed to be released forthwith.

Pending application(s), if any, shall also stand disposed of.