
(2008) 03 PAT CK 0004
In the Patna High Court
Case No : Criminal WJC No. 116 of 2008

Pramod Jaiswal @ Pramod Sah	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

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

Citation : (2008) 4 PLJR 286

Hon'ble Judges : C.M. Prasad, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Ashwini Kumar Singh and Vijay Shankar Shrivastava, for the Appellant; Roy Shivajee Nath and Amrendra Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

1. A Division Bench consisting of one of us (Justice Barin Ghosh) and Hon'ble Mr. Justice Abhijit Sinha on 12th March, 2008, without taking note of the provisions of Bihar Control of Crimes Act, 1981 (hereinafter referred to as "the Act") as they stand and by taking note of only sub-section (2) of Section 12 thereof pronounced in court that the subject detention is not sustainable in law. Soon thereafter the mistake committed by the said Division Bench was noticed by the members thereof and accordingly they did not sign the order dated 12th March, 2008 and brought the matter to the notice of the Learned Counsel for the parties by posting the case under the heading "To be mentioned". Learned Counsel appearing on behalf of parties also accepted that in law the order dated 12th March, 2008 is not perfect and, accordingly, it was decided that the matter will be reheard. As a result, the application was posted under the heading "To be mentioned" today with the consent of the Learned Counsel for the parties and on the understanding that the matter will be heard afresh. Learned Counsel for the petitioner submitted that the grounds for detention indicated in the detention order dated 14th December, 2007 are factually incorrect. It was submitted that

as on 14th December, 2007 the District Magistrate was under the impression that the petitioner is an under trial prisoner in Chiraya P.S. Case No. 22 of 2005; whereas, in fact, on 9th July, 2007 the petitioner was acquitted in the said case. It was submitted that on 14th December, 2007 the District Magistrate felt that the petitioner is still in custody in connection with Chiraya P.S. Case No. 103 of 2005 when, in fact, on 9th May, 2007 this Court granted bail to the petitioner in connection with the said case. It was also submitted that although on 7th December, 2007 this Court allowed the bail application of the petitioner in Raxaul P.S. Case No. 175 of 2007, the District Magistrate on 14th December, 2007 felt that the petitioner is still in custody in connection with the said case. Learned Counsel for the petitioner further submitted that whereas on 11th December, 2007 an entry was made in the case diary that in order to ensure bail, the petitioner is extorting money from the wealthy businessmen, but it had been stated in the order dated 14th December, 2007 that after investigation, a case was lodged against the petitioner in connection with the said allegation as Chiraya P.S. Case No. 196 of 2007. It was stated that the purported grounds as set forth in the detention order are no grounds and in any event the principal three grounds in connection with Chiraya P.S. Case No. 22 of 2005, Chiraya P.S. Case No. 103 of 2005 and Raxaul P.S. Case No. 175 of 2007 are incorrect and the ground appertaining to Chiraya P.S. Case No. 196 of 2007 is a figment of imagination and accordingly, the order is liable to be quashed and the petitioner should be directed to be released by allowing the present habeas corpus petition.

2. Learned Counsel for the respondents drew our attention to Section 12(A) of the Act and submitted that even if one ground is incorrect or not available, but if other grounds are available then the Court would not interfere with the order of detention, for that is the mandate of the said Section. Learned Counsel for the State further submitted that the fact remains that despite grant of bail on 7th December, 2007 in Raxaul P.S. Case No. 175 of 2005, the petitioner was not, in fact, enlarged on bail and the reason for detaining him as disclosed in the order of detention, clearly mentions that release of the petitioner from jail custody will disturb the tranquility of the locality.

3. A look at the detention order will amply demonstrate that the reason for passing the said order was that the petitioner is involved in three kidnapping and extortion cases, those cases are pending and in connection with those cases, the petitioner is in jail custody and having regard to the nature of allegations made against the petitioner in those cases, it was felt that if the petitioner, who is trying for obtaining bail, steps out of jail, public life and tranquility of the locality will be disturbed. The grounds to form the said opinion are based on three cases referred to in the order coupled with the information that in order to secure bail from jail custody the petitioner is seeking to extort money from the wealthy businessmen of the locality. No doubt allegations in those three cases are quite serious, but at the same time there is nothing on the record which would suggest that on receipt of information about extortion for obtaining release from jail, any enquiry was being made; whereas the order of detention proceeded on the basis

that on receipt of such information, in fact investigation was made which resulted in filing of Chiraya P.S. Case No. 196 of 2007, which is factually incorrect. It is true that the petitioner was in jail custody even on 14th December, 2007, but much prior thereto on 7th December, 2007 he had secured his right to be freed from jail custody. The fact that he was not, in fact, released despite obtaining bail in the last of the three cases was not taken note of while the order of detention was passed. At the same time, when the order of detention was passed it was not taken note of that in one of the cases, namely, in Chiraya P.S. Case No. 22 of 2005, the petitioner has been acquitted, it is not known whether the order of acquittal made the State dissatisfied and, accordingly, it has preferred an appeal. Even if that had taken place, of which we have no information for nothing to that effect has been brought on record, the fact remains that the District Magistrate on 14th December, 2007 was not aware of the same. Similarly the order does not show that the District Magistrate at the time of passing of the order was aware of the fact that the petitioner has been granted bail on 9th February, 2007 in connection with Chiraya P.S. Case No. 103 of 2005 and on 7th December, 2007 in connection with Raxaul P.S. Case No. 175 of 2007. It is possible that despite knowledge of such acquittal and bail orders, the District Magistrate could pass the order impugned in this petition, but whether despite knowledge of the fact that the petitioner has been acquitted in Chiraya P.S. Case No. 22 of 2005 and had been granted bails in Chiraya P.S. Case No. 103 of 2005 and Raxaul P.S. Case No. 175 of 2005, the District Magistrate would have passed the said order is a matter of doubt. It, therefore, appears from perusal of the order that while applying his mind to the factual matters, when exercising power under sub-section (2) of Section 12 of the Act, the District Magistrate did not apply his mind to the facts which could alter his decision as regards detaining the petitioner. It must be kept in mind that in order to detain a person and thereby to prevent his fundamental right of liberty one is required to be very cautious to apply his mind to all ground realities and then to come to a conclusion. The moment it is disclosed that relevant facts have not been taken note of, the legal conclusion would be that the order is vitiated by non-application of mind. In other words, if the facts were taken note of, the order might not have been passed.

4. In this connection suffice it would be to refer to a Division Bench judgment of this Court rendered in the case of Satyendra Sinha Vs. State of Bihar and Others where this Court interfered with the detention order for the reason that the detaining authority while passing the order did not take note of the fact that the detenu has been granted bail in connection with cases, on which it was apprehended that release of the detenu will be dangerous to public tranquility. The Division Bench in that case referred to a judgment of the Hon'ble Supreme Court in the case of Anant Sakharam Raut Vs. State of Maharashtra and Another, where also a detention order was interfered with inasmuch as the detaining authority while passing the detention order did not take note of the fact that the person concerned has been granted bail by the court in connection with matters

where allegations against the detainee were pending determination.

5. The reason for courts to act in such manner is obvious, for it is for the detaining authority to establish that the detainee stands apart from ordinary criminals by subjective analysis of facts relevant to the detainee. Under the circumstances, the writ petition is allowed and the order of detention is quashed. Let a writ of habeas corpus be issued for release of the petitioner. This order will not entail release of the petitioner, if he is in detention in connection with any other case.