
(1998) 10 PAT CK 0011
In the Patna High Court
Case No : Cr.W.J.C. No. 468 of 1998

Ram Lakhan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 268, 309(2), 344

Citation : (1998) 3 PLJR 915 : (1999) 3 RCR(Criminal) 105

Hon'ble Judges : R.N. Sahay, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : Ram Sumiran Singh, for the Appellant; S.D. Yadav, for the Respondent

Judgement

1. This is an application for writ of Habeas Corpus. Prayer for a direction to the Respondents to set the Petitioner at liberty since his detention since 10th July, 1998 is illegal being in contravention of Section 309(2) of the Code of Criminal Procedure.

2. The Petitioner was arrested in connection with Barauni P.S. Case No. 525/96 and remanded to jail custody on 29.4.1998. Charge sheet was submitted on 23.6.1998 and cognizance was taken on the same day.

3. The Petitioner claims to be a prominent leader of Bhartiya Janta Party. It is alleged that pursuant to conspiracy hatched by the leaders of ruling Rashtriya Janta Dal party and leaders of Communist party, the Superintendent of Police, Begusarai approached the Collector, Begusarai for transfer of the Petitioner from Begusarai Jail to Hazaribagh Jail or Buxar Jail. Letter of the Superintendent of Police, Begusarai is Annexure-1, in which it is mentioned that the Petitioner is a notorious criminal and has been planning sensational crimes inside the jail. The Inspector-General (Jail), Bihar directed the Jail Superintendent, Begusarai to obtain permission of the court concerned for transfer of the Petitioner to Hazaribagh Jail vide Annexure-2 for administrative reason. The Jail Superintendent consequently filed a petition in the court of Chief Judicial

Magistrate, Begusarai on 25.6.1998 for grant of permission to transfer the Petitioner from Begusarai Jail to Hazaribagh Jail.

4. The Chief Judicial Magistrate by his order dated 26.6.1998 (Annexure-4) granted premission to transfer the Petitioner to Hazaribagh Central Jail for administrative reasons. The Chief Judicial Magistrate further directed the Superintendent of Jail, Hazaribagh to produce the Petitioner before the Chief Judicial Magistrate, Hazaribagh or before any other Judicial Magistrate Incharge. The Petitioner was produced before the Chief Judicial Magistrate, Begusarai on 27.6.1998 and on the same day he was sent to Hazaribagh Central Jail and since then he is detained in Hazaribagh Central Jail, which, according to the Petitioner is unconstitutional.

5. The Petitioner contends that the detention of the Petitioner after 27.6.1998 is illegal being contrary to Sub-section (2) of Section 309 of the Code of Criminal Procedure. It is contended that the Chief Judicial Magistrate, Hazaribagh has no jurisdiction to remand the Petitioner to custody. It is submitted that the case has not been committed to the court of Sessions, hence production before the Magistrate having jurisdiction to commit the case was mandatory and that production before the Chief Judicial Magistrate Hazaribagh was absolutely illegal.

6. It would be relevant first to examine the propriety of the order of the Chief Judicial Magistrate permitting transfer of the Petitioner from Begusarai Jail to Hazaribagh Central Jail on the request of the inspector General of police. No counter affidavit has been filed disclosing the precise administrative reasons warranting shifting of the Petitioner to far away Hazaribagh central Jail. Even the order of the Chief Judicial Magistrate is silent in respect of the allegations against the Petitioner. It is submitted that the reason for transfer was not even disclosed to the Chief Judicial Magistrate, Begusarai in the petition filed by the Jail Superintendent, Begusarai. It is clear from the order dated 26.6.1998 that the Chief Judicial Magistrate has taken precaution to direct that the Petitioner shall be produced before the competent court i.e. C.J.M., Begusarai. The Petitioner was produced before the Chief Judicial Magistrate, Begusarai on 27.6.98 and was remanded till 10.7.1998. There is no order of the Chief Judicial Magistrate, Hazaribagh remanding the Petitioner to custody.

7. There is no doubt that till investigation is not complete, only a magistrate has jurisdiction to take cognizance of the offence and avail himself of the provisions of Section 344 without taking cognizance of the offence. It is also well settled that unless there is valid order of detention, the person detained is entitled to be released forthwith. After submission of charge sheet, the Magistrate can remand the accused person to custody under Sub-section (2) of Section 309 Code of Criminal Procedure. That Sub-section applies at the stage of enquiry or trial.

8. As held by Full Bench of this Court in Rabindra Rai v. State of Bihar 1985 B.L.J. 600 : 1984 PLJR 701, enquiry within the meaning of Section 2(g) for the Code shall deem to have commenced since the submission of the police report and

shall continue till the order of commitment is made u/s 209 Code of Criminal Procedure. Since in the instant case, there is no order of the Chief Judicial Magistrate, Hazaribagh remanding the Petitioner to custody, it cannot be argued that the detention of the Petitioner to Hazaribagh Central Jail after the order of remand passed by the Chief Judicial Magistrate, Begusarai was illegal.

9. This application, however, must succeed in view of the decision of the Division Bench of this Court in Jugal Pai v. State of Bihar 1995 (1) P.L.J.R. 223, in which sitting with P.K. Deb, J. I held that u/s 268 Code of Criminal Procedure. only the State Government is competent to order detention and transfer of person to a particular jail and Inspector General of Prison not being the State Government is not authorised to pass order for transfer from one jail to another. The transfer order of the Inspector General of Prison, Bihar and not by the State Government, transferring the Petitioner from Begusarai jail to Hazaribagh Central Jail after obtaining permission of the Chief Judicial Magistrate, Begusarai is per se illegal. The order of the Chief Judicial Magistrate, Begusarai dated 26.6.1998 is illegal and without jurisdiction and further there was no ground for permitting the Petitioner to transfer to Hazaribagh Central Jail.

10. The detention of the Petitioner, however, cannot be said to be illegal, so he is not entitled to be released from custody.

11. Let a writ of mandamus be issued to Respondents No. 2 to 5 to produce the Petitioner before the Chief Judicial Magistrate, Begusarai and if in the meantime he has already been produced before the Chief Judicial Magistrate, Begusarai, then the Chief Judicial Magistrate, Begusarai shall remand the Petitioner to proper custody in accordance with law.