

(2003) 05 PAT CK 0086
In the Patna High Court
Case No : C.W.J.C. No. 25 of 2003

Rama Shankar Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2)

Citation : (2003) 3 PLJR 163

Hon'ble Judges : S.N. Jha, J;P.N. Yadav, J

Bench : Division Bench

Advocate : Ashwini Kumar Singh and Devi Das Srivastava, for the Appellant;
Amar Nath Singh, Shailendra Kumar and R.K. Mishra for State, for the
Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner is aggrieved by his detention u/s 12 (2) of the Bihar Control of Crimes Act, 1981 by the District Magistrate, Gopalganj vide his memo no. 3034/C dated 29.8.2002. The order was approved by the State Government u/s 12(3) of the Act on 9.9.2002 vide Annexure 2. The petitioner seeks quashing of the said orders and his release. Before setting out the contention of the Counsel for the petitioner it may be mentioned that the detention order along with the grounds was served on the petitioner on 31.8.2002. On 18.9.2002 he filed representation. On 16.10.2002 the petitioner was informed that his representation had been rejected.

2. It was submitted on behalf of the petitioner that there was inordinate delay in disposal of the representation amounting to violation of petitioner's fundamental right under Article 22(5) of the Constitution and the detention is fit to be quashed on this ground alone. The law is settled on the point that what is of significance is not quantum of delay as such, but the explanation of the delay. The respondents have filed counter affidavits—one on behalf of the Department and the other on behalf of the District Magistrate—from perusal of which it

appears that the representation submitted by the petitioner on 18.9.2002 was sent by the jail authorities to the Home (Special) Department on 19.9.2002 i.e. on the next day. On 23.9.2002 it was received in the Department. On the same day comments were called for from the Detaining Authority i.e. District Magistrate, Gopalganj. On 27.9.2002 the District Magistrate sent his comments. The comments were received in the Department on 4.10.2002. On 5.10.2002 the office dealt with the representation. The Deputy Secretary and the Secretary of the Department put up their notes on 7.10.2002 and 8.10.2002, respectively. On 9.10.2002 the Minister Incharge, agreeing with their opinion, rejected the representation. The rejection was communicated to the petitioner on 16.10.2002.

3. It was submitted on behalf of the petitioner that there is no adequate explanation for the period between 19.9.2002 and 4.10.2002. Learned Standing Counsel No. 8 appearing for the respondents, stated that the representation was sent by the jail authorities by speed post on the very next day of its receipt and if it took four days to reach the Department, the respondents authorities cannot be held responsible for the vagaries of the Postal Department. Counsel submitted that it is the practice of the Department to call for comments from the Detaining Authority and the same was done on that very day the representation was received in the Department i.e. on 23.9.2002. After communication was received by the District Magistrate he prepared the comments and sent it within no time on 27.9.2002. Counsel pointed out that during the intervening period the government offices were closed on 2.10.2002 and 6.10.2002 being national holiday on account of Mahatma Gandhi's birth day and Sunday, respectively. He referred to the decision of the Supreme Court in *Ahamed Nassar Vs. The State of Tamil Nadu and Others*, , in which the mode of communication in cases arising from detention order through speed post was approved. The Court held that communication through speed post-not to be considered as "callous, slack or casual disposition of representation". The Court further observed that if delay occurred on account of vagaries of the Postal Department the same could not be attributed to the State. The submission of the detenu was accordingly rejected.

4. I find substance in the submission of the learned Standing Counsel. It is to be kept in mind that it is not a case where the respondents sat over the representation as in the case of *Rajammal Vs. State of Tamil Nadu and Another*, , or *Kundanbhai Shaikh Vs. Magistrate, Ahmedabad and others*, , relied upon on behalf of the petitioner. The representation/file kept moving from one office/table to another and if any delay occurred it was in course of transit. The detenu is entitled to benefit of the delay in disposal of the representation where there is lack of awareness on the part of the concerned authorities to dispose of the representation with reasonable dispatch. Where despite due awareness and diligence some time is spent in movement and transit of file, as it is bound to, the authorities cannot be accused of delay. As noticed above, the representation of the petitioner kept moving from one place to another. There does not appear to be any delay on the part of the authorities muchless any callous delay in disposal of the representation. It indeed took 20 days in all to decide the

representation. In the facts and circumstances, it is not possible to uphold the contention about so-called delay in disposal of the representation.

5. Counsel for the petitioner then submitted that the detention order is fit to be quashed as the petitioner has been detained on account of three cases, being Vijaypur P.S. Case No. 21/2001, Vijaypur P.S. Case No. 31/2001 and Vijaypur P.S. Case No. 97/2001 dated 11.4.2001, 20.4.2001 and 18.12.2001 respectively. It was stated that as a matter of fact the first two cases relate to the same incident. In my view, it was submitted, even reckoned from the date of last incident the detention order was passed after eight months. Thus there being no proximity between the alleged acts and the detention the impugned orders cannot be said to be in accordance with the spirit of the relevant provisions of the Bihar Control of Crimes Act which contemplates immediate arrest of the person to prevent him from committing acts prejudicial to the maintenance of public order. In this regard, reliance was placed on *Jagan Nath Biswas vs. The State of West Bengal*, 1975 SC 1516. *Ram Kishore Singh @ Kale Singh Vs. The State of Bihar and Others*, *Mohan Singh Vs. The State of Bihar and Others* and *Union of India (UOI) and Another Vs. Mohan Pal, etc. etc.*, .

6. Learned Standing Counsel submitted, in reply, that the preventive detention of a person depends on subjective satisfaction of the detaining authority. The chargesheet in the aforementioned cases were submitted respectively only on 10.4.2002, 29.4.2002 and 30.4.2002. The petitioner was in custody till the date of detention and the detaining authority was of the opinion that there was likelihood of his release on bail. He was further of the opinion that if released he would commit similar crimes and thus on being satisfied passed the order of detention.

7. It is true, as observed by the Supreme Court in *Jagan Nath Biswas vs. The State of West Bengal*, 1975 SC 1516, that there should be some reasonable proximity between the alleged acts of the person and his detention and in the absence of any explanation the acts allegedly committed by the person may be said to have become stale. However, there cannot be any strait-jacket formula to draw a line of demarcation beyond which the detention order cannot be passed. In the cases decided by this Court, referred to above, the detention order has been passed respectively after gap of 10 months and 14 months from the last incident. In the instant case, the stand of the respondents is that the case was under investigation till the month of April 2002. It was only after the chargesheet was submitted that the Detaining Authority came to the conclusion that the acts allegedly committed by the petitioner were such as to give rise to the apprehension that in the event of his being released on bail he may commit similar acts.

8. In *Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others*, , the Supreme Court observed that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting number of months between the offending acts and the order of detention. In *Yogendra Murari Vs. State of U.P.*

and Others, , the Supreme Court observed that the order of detention cannot be mechanically struck down on the ground of delay. It is necessary to consider the circumstances in each individual case in order to find out that the delay has been satisfactorily explained or not. Where the person concerned is in custody there could not be any apprehension of indulging in illegal activities until grant of bail by the criminal court become imminent or where some inquiry or investigation is pending. In the instant case, thus, as the chargesheet was submitted in the month of April, 2002 and till then the detaining authority did not think that there was any chance of petitioner committing any act prejudicial to maintenance of public order, the explanation of the detaining authority is fit to be accepted. At any rate the satisfaction cannot be questioned in writ jurisdiction and thus the order of detention passed, say, after eight months of the alleged acts cannot be said to be belated. I, thus, do not find any substance in the second contention either.

9. Counsel then submitted that the petitioner cannot be termed "anti-social" within the meaning of Control of Crimes Act. The submission has been noticed only to be summarily rejected. The term "antisocial element" has been defined in Section 2(d) as under :

"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; or

(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 of 1959.

On a plain reading of the above definition it would appear that where, inter alia, any person either by himself or as a member of leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under chapters XVI or XVII of the Indian Penal Code, he can be termed as "anti-social element". In the aforesaid cases, chargesheets have been submitted against the petitioner u/s 307 besides other sections of the Penal Code and the Arms Act. The cases fall within the ambit of Chapter XVI of the Penal Code, and, therefore, there is no difficulty in holding that as per the allegations in those cases, the petitioner comes within the mischief of term "anti-Social element".

This contention of the counsel also is, accordingly, rejected.

10. Counsel for the petitioner lastly submitted that u/s 12(2) the District Magistrate exercises the delegated power of the State Government and under proviso thereto the delegation/authorisation cannot exceed three months at the first instance. There is no material to show that the District Magistrate, Gopalganj, was duly authorised to make orders of detention.

11. This aspect of the case has not been dealt with in the counter affidavit. In my opinion, however, once the order of detention is approved by the State Government under 12(3) of the Act, the question as to whether there was any valid authorisation in favour of the detaining authority, loses its significance. It should be kept in mind that what is under challenge in the case is the detention of the petitioner and not the authorisation as such. As stated at the outset, the petitioner's detention was approved by the State Government within the permissible period on or about 9.2.2002. The order of the detaining authority thus merged in the order of the State Government and there is no question of interfering with the impugned detention on the ground that the District Magistrate was not authorised to make the impugned order. The contentions of the counsel for the petitioner having been rejected this writ petition must fail which, is accordingly dismissed.

P.N. Yadav, J.

12. I agree.