

(2024) 01 PAT CK 0047

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1686 Of 2023

Raushan Kumar @ Roshan Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 15-01-2024

Acts Referred:

Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substance Act, 1988 —
Section 3(1), 9(b)

Citation : (2024) 01 PAT CK 0047

Hon'ble Judges : P. B. Bajanthri, J;Ramesh Chand, J

Bench : Division Bench

Advocate : Pranav Kumar Jha, K.N.Singh, Anshuman Singh, Prabhat Kumar Singh, Prakritita Sharma, Shivadityadhari Sinha, P.K.Shahi, Prabhu Narayan Sharma

Final Decision : Dismissed

Judgement

1. In the instant petition, petitioner has prayed for the following relief(s):-

"For issuance of an appropriate order/orders and writ/writs in the nature of Habeas Corpus for setting aside the order of detention dated 16.05.2023 issued by the Respondent No. 2 in exercise of the powers conferred by Section 3(1) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substance Act, 1988 by which the petitioner has been illegally detained in custody for indefinite period without requisite and sufficient materials to support subjective satisfaction for passing preventive detention order by the detaining authority and further in the nature of mandamus for directing and commanding the Respondent detaining authority to release the petitioner from custody and further any other relief or reliefs for which petitioner is entitled in the facts and circumstances of the present writ application."

2. On 11.12.2023, the following order was passed:-

"On 07.12.2023 matter was reserved for judgment. While dictating order we

have noticed that grievance of the petitioner should have been restricted to order of detention and not releasing. For the reasons that insofar as releasing is concerned is a subject matter of various cases under NDPS Act and it is pending consideration before various Special Courts.

2. We have also perused the records and wherein petitioner has been denied bail. Further, we are under the impression that grievance of the petitioner would fall under Habeas Corpus having regard to the language employed by the petitioner in the prayer or the petition. On the other hand, it is relating to only questioning the detention order under Section 3(1) of the Prevention of Illicit Traffic in Narcotics Drugs & Psychotropic Substance Act, 1988 (in short 'PITNDPS Act, 1988'). Therefore, it is not a case which fall under Habeas Corpus thereafter, we have perused the Group No. 53. Group No. 53 is consisting of Habeas Corpus, BCC Act and others. The present case would fall under others whereas in the roster notification it is indicated only Habeas Corpus, BCC Act and 'others' has been left out. While examining what are the subject matter would fall under Group No. 53, we have noticed that Habeas Corpus, BCC Act and others. The present case would fall under the heading of others.

3. The petitioner has assailed the order dated 16.05.2023 and it relates to detention indefinitely issued by the 2nd Respondent – Joint Secretary, Ministry of Fiance, Department of Revenue, (P.I.T.N.D.P.S. Unit), Government of India, New Delhi.

4. It is necessary to take note of Section 3(1) of PITNDPS Act, 1988 and it reads as under:-

"3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government, or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained."

[Underline Supplied]

5. Perusal of the impugned detention order word satisfaction is required to be examined by this Court to the extent whether Joint Secretary to the Government of India was satisfied with the material or not in the light of Hon'ble Apex Court decision in the case of Ameena Begum vs. State of Telangana & Ors. reported in (2023) 9 SCC 587 (Para 31).

6. In view of the fact that impugned order dated 16.05.2023 and reasons are not assigned insofar as satisfaction, therefore, we intends to peruse the original file

relating to the impugned detention order dated 16.05.2023 passed by the Joint Secretary, Government of India whether was he satisfied with the material available so as to pass detention order against the petitioner or not?

7. The concerned learned Advocate for Government of India is hereby directed to secure the original file of detention order bearing no. F.No. U-11011/12/2023-PITNDPS on the next date of hearing.

8. Relist this matter on 12.01.2024. Copy of this order shall be made available to the panel counsel of Government of India or to the office of ASG.”

3. Today, learned counsel for the respondents furnished original file relating to passing of the impugned order followed by opinion of the Advisory Board and its confirmation by the Government of India.

4. Prima facie, the present petition is pre-mature, for the reasons that petitioner had other statutory remedy in respect of his grievance, i.e., before the Advisory Board constituted under Section 9(b) of the P.I.T.N.D.P.S, Act, 1988 and further its confirmation.

5. Be that as it may, we have perused the Joint Secretary, Government of India’s detailed order dated 16.05.2023 in which he has examined the matter on merits and extracted relevant pending cases initiated against the petitioner. Thereafter, he has come to the conclusion to the extent that petitioner - Raushan Kumar alias Roshan Singh is alleged to be habitual offender and indulge in drug trafficking in the repeated manner. The multiple seizure effected by the NCB and Police Authorities revealed that he has not mended his ways and were involved in drug trafficking in a regular manner. Thereafter, proceeded to pass order of detention.

6. Having regard to Para 6 to 14 of the aforementioned order, it suffice that there is a satisfaction of the Joint Secretary, Government of India in the light of the Section 3(1) of PITNDPS, Act, 1988. Thereafter matter was taken up before the Advisory Board. Advisory report was submitted on 06.07.2023 and it was confirmed on 25.07.2023 by the Government of India. Taking note of these developments the petitioner has not made out a case so as to interfere with the impugned order dated 16.05.2023.

7. Accordingly, the present petition stands dismissed.

8. Reading of 25.07.2023 in respect of confirmation of the Advisory Board report, the Government of India has taken decision to detain the petitioner for a period of one year. Thereafter, petitioner is permitted to approach the competent forum or authority.