
(2006) 12 PAT CK 0123
In the Patna High Court
Case No : Cr.W.J.C. No. 374 of 2006

Sanjay Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Arms Act, 1959 — Section 27
Bihar Control of Crimes Act, 1981 — Section 12(2)
Explosives Act, 1884 — Section 3, 5
Penal Code, 1860 (IPC) — Section 147, 171(C), 186, 307, 326
Representation of the People Act, 1951 — Section 135(A)

Citation : (2007) 1 PLJR 645

Hon'ble Judges : Narayan Roy, J;Ajay Kr. Tripathi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard counsel for the petitioner and JC to AAG 6 for the respondents. This habeas corpus application has been filed on behalf of the petitioner challenging the order of detention passed by the District Magistrate, Vaishali in exercise of his power u/s 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter to be referred to as "Act").

2. It appears that the petitioner was detained by virtue of the order, as contained in annexure 2 dated 14.2.2006, wherein several grounds have been mentioned showing the criminal cases lodged against the petitioner. The detaining authority, having been satisfied that the petitioner since is a habitual criminal he cannot be prevented otherwise than by detaining him in exercise of power u/s 12(2) of the Act, detained him by the order impugned. From the grounds of detention, we find that he was an accused in Jandaha Police Station Case No. 68 of 2004 for offences under sections 332, 333, 353, 326, 386 and 186 of the Indian Penal Code read with Section 27 of the Arms Act and before that he was also an accused in Jandaha Police Station Case No. 61 of 2004 dated 12.7.2004 for offences u/s 414 of the Indian Penal Code. After his release from custody he

again committed offence in Jandaha Police Station Case No. 15 of 2005 for offences under sections 147, 447, 448, 307 and 171(C) of the Indian Penal Code read with Section 135(A) of the Representation of Peoples Act and Sections 3 / 5 of the Explosive Substances Act.

3. From the background as shown in the order of detention, we also find that he was accused in as many as six cases pertaining to the offences under Indian Penal Code and Arms Act. After detention of the petitioner, his representation dated 28.2.2006 was considered and disposed of by the State authorities vide order dated 10.3.2006. The representation aforesaid was disposed of with utmost expedition and thereafter his detention was confirmed by the Advisory Board under the provisions of the Act by order dated 24.3.2006 and finally the same was approved by the appropriate Government vide order dated 15.4.2006.

4. It is submitted by learned counsel for the petitioner that the grounds as mentioned in order of detention are of the years 2004 and 2005 and there does not appear to be close proximity with the criminal activities of the petitioner and the order of detention. It is further submitted that in three cases, which have been cited as background being Jandaha Police Station Case No. 47 of 2004, Sahdei (Desari) Police Station Case No. 127 of 2001 and Bidupur Police Station Case No. 103 of 2004, he is not an accused nor chargesheets have been filed against him in these cases. Learned counsel, in this background, submitted that the detaining authority without application of mind and without his full satisfaction detained the petitioner. It is also submitted that the cases, which are reported to be against the petitioner, are pertaining to the offences under Indian Penal Code, Arms Act and Explosive Substances Act and his involvement, therefore, cannot be said to be prejudicial to the maintenance of public order, as these are matters of law and order. Learned counsel also tried to impress upon the Court that the petitioner has not indulged in any criminal activity, which would be prejudicial to maintenance of public order, and therefore, the order of detention would not be sustainable.

5. So far the cases, which have been referred in backgrounds, particularly with reference to Jandaha Police Station Case No. 47 of 2004, Sahdei (Desari) Police Station Case No. 127 of 2001 and Bidupur Police Station Case No. 103 of 2004, are concerned, the matter was verified from the relevant records in presence of the District Magistrate and the Superintendent of Police. Vaishali, who appeared before this Court on 18.12.2006. On verification of the relevant records, it transpired that the petitioner, in fact, was involved in three of the cases, but numbers of which were not properly mentioned in the backgrounds of the order of detention.

6. From the affidavits filed on behalf of the detaining authorities and the respondents, it appears that since the activity of the petitioner was found to be prejudicial to maintenance of public order, they had no option but to detain him under the provisions of the Act.

7. Per se, it appears from the materials on record that the petitioner appears to be a habitual offender and often indulged in antisocial activities. Cases have been lodged against him one after another. The activities of the petitioner, thus, appears to be prejudicial to maintenance of public order and the interest of the public at large.

8. In view of the nature of the offences committed by the petitioner, as shown in the grounds of detention, we find close proximity inasmuch as he had not indulged in one or two cases, rather he was found to be involved in so many cases right from 2001.

9. In the present scenario, it appears that the detaining authority had no option but to detain the petitioner under the provisions of the Act owing to his criminal activities.

10. So far questions of public order and law and order are concerned, there may be merely difference of degree in the cases, pertaining to law and order and public order, which may affect public tranquility and be prejudicial to public order. The detaining authorities, thus, were fully satisfied that in case, the petitioner will come out from jail, he will again indulged in antisocial activities, and therefore, it was pertinent to detain him under the provisions of the Act.

11. For the reasons aforementioned, therefore, we are satisfied that sufficient grounds were found for detention of the petitioner, which, ultimately, was approved by the State Government on examination of materials available on record and his representation aforesaid was rejected.

12. In the result, we do not find any merit in this application. It is, accordingly, dismissed.