
(2007) 02 PAT CK 0141
In the Patna High Court
Case No : Cr.WJC No. 706 of 2006

Santosh Sharma	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

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

Citation : (2007) 3 PLJR 270

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, Imteyaz Ahmad and Rajesh Ranjan Kumar, for the Appellant; Amarnath Dev and P.K. Verma for the State, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy and J.N. Singh, JJ.—Heard Mr. Ajay Kumar Thakur, Learned Counsel for the petitioner and Mr. Amarnath Dev S.C.10 for the State. The order passed by the District Magistrate, Patna, as contained in annexure-2 under the provisions of Section 12(2) of the Bihar Control of Crimes Act (hereinafter to be referred to as the "Act") is under challenge.

2. It is submitted by Mr. Thakur, Learned Counsel for the petitioner that the petitioner was detained on the grounds of his involvement in the cases as referred in the grounds which would hardly be a case of public order. It is further submitted that there is no subjective satisfaction shown in the counter affidavit filed on behalf of the District Magistrate as to how he was apprehensive that in case the petitioner will come out from the jail custody he will indulge in activities prejudicial to maintenance of public order. Lastly, Mr. Thakur submitted that there is unexplained delay in disposal of the representation filed by the detenu.

3. From the grounds as referred to in the order of detention, it appears that the petitioner's involvement was found frequently in commission of crime one after another and owing to the activities of the detenu the District Magistrate had no

option but to detain him under the provisions of the Act in public interest.

4. It is manifest from the order of detention itself that the detaining authority was fully satisfied that in case the detenu will come out from the jail custody he will indulge in criminal activities prejudicial to maintenance of public order.

5. Mr. Amarnath Dev Learned Counsel appearing on behalf of the State submitted that owing to the nature of offences committed by the petitioner, it would appear that he was a terror in a particular locality of Gardanibagh in the town of Patna and the acts committed by him would be prejudicial to maintenance of public order and, therefore, no interference is required in the matter.

6. So far as unexplained delay in disposal of the representation filed by the petitioner is concerned, it appears from the counter affidavit filed on behalf of the Home (Police) Department that the representation dated 29.8.2006 of the detenu was received in the Department on 30th August, 2006 which was sent to the District Magistrate for necessary comments by letter No. 9687 dated 31.8.2006, which ultimately was processed at different levels from 7.9.2006 to 11.9.2006 and ultimately it was rejected on 13.9.2006.

7. It is submitted by Learned Counsel for the petitioner that seven days" delay has not been explained in the counter affidavit filed on behalf of the Home (Police) Department nor there is any such explanation in the affidavit filed on behalf of the District Magistrate, Patna as to how the matter was delayed at his level for several days.

8. From the affidavit filed on behalf of the respondent Home (Police) Department, it is manifestly clear that the representation was received on 30th August, 2006 and the process virtually started from 31st August, 2006 itself, but there is no explanation for delay of seven days right from 31.8.2006 to 7.9.2006. It is referred in the affidavit that the representation of the detenu was sent to the District Magistrate for necessary comments, but it is not known to the Court as to whether any such comment was received in the office of the Home (Police) Department No explanation, whatsoever, has been furnished in the affidavit filed on behalf of the District Magistrate about this aspect of the matter. Obviously, therefore, we find unexplained delay of seven days in disposal of the representation of the petitioner.

9. Unexplained delay in disposal of the representation of the detenu would be a ground to assail the order of detention in view of the ratio laid down by the Apex Court in case of Rajammal vs. State of Tamil Nadu, reported in AIR 1999 S.C. 685 and in case of Umesh Singh Vs. State of Bihar and Others .

10. In case of Rajammal (supra) unexplained delay of five days is held to be a ground to vitiate the order of detention.

11. In the case at hand, it appears that the representation of the petitioner was not disposed of with utmost expedition nor the delay in disposal of the same was satisfactorily explained.

12. this Court, in the given facts and circumstances of the case, and faced with the legal propositions, as referred to above, is of the view that the representation of the petitioner-detenu was not disposed of with all promptitude nor satisfactory explanation was given for the delay caused in disposal of the representation and, thus, the order of detention vitiates.

13. For the reasons aforementioned, this application succeeds on this ground alone. In the result, this application is allowed, the order impugned is set aside and the petitioner is directed to be set at liberty forthwith, if not required in any other case.