
(2007) 03 PAT CK 0103
In the Patna High Court
Case No : Cr.WJC No. 753 of 2006

Shankar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12(2)
Penal Code, 1860 (IPC) — Section 201, 34, 364

Citation : (2007) 4 PLJR 388

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Ram Balak Mahto, learned senior counsel for the petitioner and Mr. Sanjay Kumar, learned Government Pleader No. 14 for the State. This habeas corpus application is directed against order dated 25th May, 2006 passed by the District Magistrate, Purnea in exercise of his power u/s 12(2) of the Bihar Control of Crimes Act (hereinafter to be referred to as "Act"), as contained in annexure 1, and also for consequential order approving the order of detention by the State Government.

2. Mr. Ram Balak Mahto, learned senior counsel appearing for the petitioner, submitted that the petitioner, who happened to be an Ex-M.I.A., was detained under the Act, mainly on two grounds, showing his involvement in Bhawanipur (Akabarpur) Police Station Case No. 24/2004 under sections 364, 302, 201/34 of the Indian Penal Code and Gandhi Maidan Patna Police Station Case No. 198/2004 under sections 307/332/353/34 of the Indian Penal Code and Sections 25(1-B)/26/27/35 of the Arms Act terming the same prejudicial to maintenance of public order.

3. Learned counsel for the petitioner submitted that there is no close proximity with the criminal activities of the detenu of the year 2004 with the order of detention passed in May 2006. Learned counsel also contended that in the order

impugned the authorities apprehended release of the petitioner from the jail custody, and, therefore, it necessitated them to detain him preventing his activities in any manner prejudicial to maintenance of public order, though there was no cogent material before the detaining authorities, on the basis of which the detaining authority was satisfied that the detenu was likely to be released on bail. It is also submitted that in the cases, shown as backgrounds, the petitioner has got bail and has also been acquitted in some of the cases. In these backgrounds, learned counsel, therefore, contended that the order of detention passed against the petitioner would not be sustainable on stale grounds.

4. Learned counsel for the State, however, submitted that the petitioner appears to be a habitual offender and his involvement has been found to be altogether in 47 cases and the detaining authority owing to his criminal activities detained him under the provisions of the Act to prevent him from indulging in such activities on apprehension that he may be released on bail. Learned counsel, therefore, submitted that the order of detention would not vitiate and the State authorities after full application of mind approved the order of detention passed against the petitioner.

5. From the order of detention and the grounds of detention, it appears that only two cases have been cited as grounds of detention, namely, Bhawanipur (Akabarpur) Police Station Case No. 24/ 2004 under sections 364/302/201/34 of the Indian Penal Code and Gandhi Maidan Patna Police Station Case No. 198/2004 under sections 307/332/353/34 of the Indian Penal Code and Sections 25(1-B)/ 26/27/35 of the Arms Act, whereas in the backgrounds involvement of the petitioner has been shown in 45 cases ranging from 1990 to 2003. The cases, which have been shown as grounds of detention, however, have also been included in the backgrounds alongwith other cases.

6. It further appears that the cases, which have been shown as grounds of detention relate to the year 2004, whereas the order of detention was passed in May 2006. The offences, which were committed by the petitioner in the year 2004, do not appear to be proximate to each other and even the last incident is not proximate to the date of proposed detention, and almost after two years of commission of offences, as shown in the grounds of detention the order of detention was passed by the authorities. From the objects and reasons of the Act, it appears that it aims to prevent a person from indulging in illegal activities in any manner prejudicial to maintenance of public order, and necessarily, therefore, the detaining authorities must be satisfied that the proposed detenu is likely to indulge in such activities in future also, Therefore, it is necessary for the authorities in proposing the detention of a person under the Act to produce such material, which shows the continuous previous illegal activities of the proposed detenu, which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents, last of which will have to be proximate to the date of proposed detention while other acts must be proximate

to each other. In this connection reference may be made to the case of The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Others Vs. Sangala Kondamma, .

7. For the incidents of the year 2004 the detenu has been detained in the year 2006 and, thus, in our considered opinion, they are not proximate to the date of detention, which necessarily is the essence of order of detention. We, thus, find force in the contention of Mr. Ram Balak Mahto, learned counsel for the petitioner.

8. Now so far second limb of argument of Mr. Mahto, learned senior counsel for the petitioner, that the detaining authorities had no cogent material, on the basis of which they could be satisfied that the detenu was likely to be released on bail is concerned, it appears that no material, whatsoever, has been produced on record by way of an affidavit to show that the detenu was likely to be released on bail, and, thus, his detention was necessitated by preventing him in indulging in commission of crime in any manner prejudicial to maintenance of public order.

9. From the materials on record, it appears that at the time of detention in the year 2006 the detenu was already in custody from before and after his detention he is said to have been granted bail in those cases and no offence was committed by the detenu after the last date of incident in 2004 in the meantime.

10. In case of T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another, and in case of A. Shanthi (Smt.) vs. Government of Tamil Nadu and Others [2006(9) SCC 711], the Apex Court has held that the imminent possibility of the appellant (detenu) coming out on bail may not be merely the ipse dixit of the detaining authority unsupported by any material, whatsoever. There must be cogent material before the detaining authority, on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. Inference, therefore, has to be drawn from the materials available on record.

11. From the materials on record, as we have referred, we are satisfied that the authorities had no cogent material before detaining the petitioner to satisfy that the detenu should be detained, as there was likelihood of his release on bail.

12. In absence of such material on record ipse dixit of the detaining authority is not sufficient to sustain the order of detention.

13. Having heard counsel for the parties and on appreciation of facts placed on record, we are of the view that the petitioner was detained on stale grounds, as the same have no close proximity with the date of detention and the detaining authority detained the petitioner without having their subjective satisfaction about release of the detenu from jail custody to indulge in further criminal activities.

14. For the reasons and discussions aforementioned, therefore, the order of detention vitiates. In the result, this application is allowed, order of detention passed against the petitioner is set aside and he is directed to be set at liberty

forthwith, if he is not required in any other case.