

**(2012) 03 JH CK 0150**

**In the Jharkhand High Court**

**Case No : W.P (HB) (Cr.) No. 368 OF 2011**

Shiv Shankar Yadav @ Lakshman Jee @ Vikas Jee @  
Shivshankar Kumar Yadav @ Lakshman Yadav

**APPELLANT**

**Vs**

The State of Jharkhand and Others

**RESPONDENT**

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**Date of Decision : 12-03-2012**

**Acts Referred:**

Arms Act, 1959 — Section 25(1)A, 26, 26(2), 27  
Criminal Law (Amendment) Act, 1932 — Section 17  
Jharkhand Control of Crimes Act, 2002 — Section 12, 12(1), 12(A), 12A(1), 17  
Penal Code, 1860 (IPC) — Section 120, 147, 148, 149, 34  
Unlawful Activities (Prevention) Act, 1967 — Section 13

**Citation : (2012) 2 JLJR 169**

**Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

1. Heard counsel for the parties.

2. The petitioner, challenging the detention order dated 3rd May, 2011 and confirmation order dated 12th May, 2011, submitted that he was detained by the order dated 3rd May, 2011, Annexure - 1, without assigning any reason as well as it is apparent from the order that there was no material facts before the authority, who passed the impugned order. It is also submitted that only copy of Annexure -1 was supplied to the writ petitioner and therefore, the grounds, as disclosed by the respondents in order annexed with the reply to the writ petition, were not known to the writ petitioner and as per the mandatory provision of section 17 of the Jharkhand Crime Control Act, 2002, the grounds for detention are required to be served upon detinue and in view of the aforesaid reasons, both the order of detention, Annexure - 1, and the confirmation order, which has been passed mechanically on 12th May, 2011, deserve to be set aside. It is also submitted that even from the order of detention, which has been placed on record by the respondents along with the counter-affidavit, it is clear that the

authority, which passed the order of detention u/s 12(1) and 12-A of the Jharkhand Crime Control Act, 2002, took into consideration absolutely non-existent as well as irrelevant facts and passed the order on apprehension that the petitioner, who is already in jail in connection with five criminal cases, may be released on bail and then he may commit same offence and such inference drawn by the authority is without any basis.

3. Learned counsel for the petitioner, relying upon a judgment of the Supreme Court delivered in the case of Yumman Ongbi Lembi Leima Vs. State of Manipur & Ors. reported in 2012 (1) JLR (SC) 271, submitted that the Hon'ble Supreme Court held therein that the apprehension that the detainee may be released on bail in earlier registered case itself cannot be the ground for passing the order of detention.

4. We considered the submissions of the learned counsel for the parties and perused the facts of the case. We also perused the recommendation made by the Sub-Divisional Police Officer dated 15th November, 2010, sent to Deputy Commissioner, Latehar, about the offence committed by the writ petitioner. The Sub-Divisional Police Officer gave details relating to the cases, which were pending against the writ petitioner and they are - (I) Panki P.S. Case No. 120/08, which was registered on 23rd October, 2008 u/s 147/148/149/341/342/435/427/379/120(b) I.P.C as well as u/s 27 of the Arms Act and u/s 17 CLA Act; (II) Latehar P.S. Case No. 62/09 which was registered on 12th May, 2009 u/s 435/34 I.P.C and u/s 17 CLA Act; (III) Panki P.S. Case No. 94/09 which was registered on 31st August, 2009 u/s 395 I.P.C; (IV) Panki P.S. Case No. 95/09, which was registered on 31st August, 2009, u/s 147/148/149/353/364(A), 379 I.P.C and u/s 17 CLA Act and (V) Latehar P.S. Case No. 129/09 which was registered on 19th September, 2009, u/s 25(1-b)/26/26(2) of Arms Act and u/s 17 CLA Act and u/s 13 UA Act. The Superintendent of Police then requested the Deputy Commissioner, Latehar, vide letter dated 20th November, 2010, and thereafter impugned order was passed by the Deputy Commissioner, Latehar, after considering the report dated 15th November, 2010. The detaining authority observed that the petitioner is a dreaded sub-zonal commander of the banned organization PLFI which has been terrorizing the area and people for levy and has been responsible for multiple murders in the area in striving to establish an illegal power hegemony for PLFI and to challenge the law of the land. The authority also observed that the petitioner is an anti-social element and took note of the certain fact that he is in judicial custody in Latehar jail and thereafter, it has been apprehended that the petitioner, if bailed out, would repeat the same criminal activities in the area.

5. Therefore, factual foundation for passing the order before the authority was very much there. However, objection of the learned counsel for the petitioner is that as the authority considered absolutely irrelevant and wrong facts, as it observed that the petitioner was responsible for multiple murder whereas the facts of the cases reveal that he was never involved in any murder case. It is

also submitted that the authority apprehended on flimsy ground that the petitioner, if bailed out, will repeat the same criminal offence in the area.

6. So far as observation of the authority that the petitioner was responsible for multiple murder is concerned, the authority has not said that the petitioner was involved in multiple murder. Otherwise also even if this ground appears to be non-existent one, then there is a statutory provision in the Jharkhand Crime Control Act, 2002 itself, i.e. section 12-A, wherein under sub-clause (a) of section 12-A(1), it has been provided that such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are (i) vague, (ii) non-existent, (iii) non-relevant, (iv) not connected or not proximately connected with such person or (v) invalid for any other reason whatsoever and then it has been provided that on these grounds, it is not possible to hold that the Government or officer making such order would have not been satisfied as provided in section 12 with reference to the remaining ground or grounds and made the order of detention.

7. Be that as it may, even in absence of the grounds specified in section 12-A, we are of the considered opinion that reasonable reasons for drawing inference were very much in existence. At this juncture, we may observe that the detention order is not an order of punishment and it is passed on the basis of apprehension and inference of apprehension is drawn from the totality of the facts of a particular person, which may indicate that the said detention is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social elements cannot be prevented otherwise than by the immediate arrest of such person. Therefore, the Act itself has been enacted to detain a person in apprehension and not on account of punishable offence.

8. So far as the ground raised by the petitioner that he has not been supplied with the copy of the detention order dated 3rd May, 2011, copy of which has been placed on record along with counter-affidavit as Annexure - A, is concerned, we are not satisfied with the submission of the petitioner that the said copy was not supplied. It appears from Annexure - 3 placed on record by the writ petitioner himself that he not only replied to the grounds for detention but also expressly mentioned that he is not a member of any terrorist organization and that fact is not in the consequential order, Annexure - 1, dated 3rd May, 2011, which is sought to be challenged but is reason given in the reasoned order passed by the authority dated 3.5.2011. Therefore, it appears that the petitioner was supplied with the reasons for passing the detention order, Annexure - 3. In view of the above reasons and on fact, the petitioner is not entitled to any relief.

9. So far as the judgment of the Supreme Court delivered in the case of Yumman Ongbi Lembi Leima Vs. State of Manipur & Ors. (supra) is concerned, the facts of that case are entirely different. In that case, the offence committed 12 years ago was taken into account for passing the detention order and in that fact situation,

apprehension of release of the detainee on bail was also considered. In the case in hand, offence, which has been committed by the writ petitioner, relate to the year 2008 and 2009 and the detention request was made in 2010 itself. Therefore, the fact of the present case is entirely different from that of the aforesaid case.

10. Learned counsel for the petitioner also submitted that the petitioner was a minor on the date on which the alleged offence was committed and the petitioner's case is under consideration for determining his age at the time of alleged occurrence of the offence. It is submitted that the detention order, therefore, was deliberately passed after a delay.

11. We are not convinced with the argument advanced by the learned counsel for the petitioner that the petitioner was a minor at the relevant time when the alleged occurrence occurred as that issue is yet to be decided and secondly, it is important to note that there is no material on record except one certificate produced by the writ petitioner that he was a minor at the relevant time and it is a certificate of passing examination granted by Jharkhand Academic Council. This issue cannot be decided herein, in the writ jurisdiction as the matter is pending before the appropriate authority and therefore, we are not satisfied with the submission of the learned counsel for the petitioner that the detention order was passed after a delay simply because by the time of passing the order, the petitioner was to become a major.

12. In view of the above reasons, there is no merit in this petition and it is dismissed.