

(2014) 07 PAT CK 0026
In the Patna High Court
Case No : Cr. WJC No. 523 of 2014

Shyam Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Arms Act, 1959 — Section 25(1-B)A 26
Bihar Control of Crimes Act, 1981 — Section 12 12(2) 12-A 21(1) 22
Constitution of India, 1950 — Article 21 22 226
Penal Code, 1860 (IPC) — Section 392 395 412 414

Citation : (2015) 3 PLJR 124

Hon'ble Judges : I.A. Ansari, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Virendra Kumar, Advocate for the Appellant; Amiya Kumari,
Advocate for the Respondent;

Final Decision : Allowed

Judgement

I.A. Ansari, J.

1. By his letter, dated 1.1.2014, the Sub-Divisional Police Officer, Pupri, Sitamarhi, addressed to the respondent No. 4, District Magistrate, Sitamarhi, through respondent No. 5, Superintendent of Police, Sitamarhi, sought for detention of the present petitioner under the provisions of sub-section (2) of Section 12 of Bihar Control of Crimes Act, 1981. On receiving the letter, dated 1.1.2014, of the Sub-Divisional Police Officer, Pupri, Sitamarhi, respondent No. 5, Superintendent of Police, Sitamarhi, by his letter, dated 2.1.2014, addressed to respondent No. 4, namely, District Magistrate, Sitamarhi, also sought for detention of the present petitioner under the provisions of sub-section (2) of Section 12 of Bihar Control of Crimes Act, 1981. Following the letter so received, respondent No. 4, namely, District Magistrate, Sitamarhi, issued, on 27.1.2014, show cause notice to the present petitioner. In response to the show cause notice, dated 27.1.2014, the petitioner submitted his show cause and, upon considering the show cause, filed by the petitioner, respondent No. 4, namely,

District Magistrate, Sitamarhi, rejected the same and, made, on 20.2.2014, an order, in exercise of powers under Section 12(2) of Bihar Control of Crimes Act, 1981, placing the petitioner under preventive detention, for a period of one year, i.e., until 19.2.2015. With the order of detention so made as mentioned above, the petitioner was also served with a copy of the grounds of detention, contained in memo No. 488, dated 20.2.2014, issued by respondent No. 4, namely, District Magistrate, Sitamarhi. The said order of detention was approved by the Advisory Board on 2.4.2014 and, following approval of the Advisory Board, the State Government, by order, dated 16.4.2014, confirmed the said order of preventive detention, dated 20.2.2014.

2. The grounds of detention, which were furnished to the petitioner, mentions only two cases, namely, (i) Bajpatti Police Station Case No. 145 of 2013, dated 5.7.2013, registered under Section 392 of the Indian Penal Code, and (ii) Parihar Police Station Case No. 143 of 2013, dated 19.7.2013, registered under Sections 395, 412 and 414 of the Indian Penal Code. Apart from the two cases aforementioned, two other cases were shown as criminal antecedent of the petitioner, which are; (i) Bathnaha Police Station Case No. 136 of 2013, dated 3.7.2013, registered under Section 395 of the Indian Penal Code, and (ii) Bajpatti Police Station Case No. 152 of 2013, dated 22.7.2013, registered under Section 414 of the Indian Penal Code and Sections 25(1-B)/A/26 of the Arms Act, 1959.

3. Aggrieved by his detention, the petitioner has made this application, under Article 226 of the Constitution of India, seeking to get set aside and quashed not only the order of preventive detention, dated 20.2.2014, but also the order of approval, dated 2.4.2014, passed by the Advisory Board, Government of Bihar, and the order, dated 16.4.2014, passed by the State Government in exercise of power under Section 21 (1) read with Section 22 of Bihar Control of Crimes Act, 1981, confirming the order of detention, dated 20.2.2014, aforementioned and directing that the petitioner shall remain in detention till 19.2.2015.

4. We have heard Mr. Virendra Kumar, learned Counsel for the petitioner, and Ms. Amiya Kumari, learned Assistant Counsel to the Additional Advocate General No. 10, appearing on behalf of the State.

5. While considering the legality and validity of the impugned order of detention, it needs to be noted, as already indicated above, that in terms of the grounds of detention, which have been furnished to the petitioner, the petitioner is shown to be an accused in two cases, namely, (i) Bajpatti Police Station Case No. 145 of 2013 and (ii) Parihar Police Station Case No. 143 of 2013.

6. In both the cases aforementioned, charge-sheets have been submitted against the petitioner. The petitioner is in custody and it is mentioned, in the impugned order, dated 20.2.2014, passed by respondent No. 4, namely, District Magistrate, Sitamarhi, that in Bajpatti Police Station Case No. 145 of 2013, the bail application of the petitioner has been rejected; whereas in Parihar Police Station

Case No. 143 of 2013, the application for bail is pending.

7. While considering the present writ petition, what needs to be borne in mind is that personal liberty of a person is sacrosanct and State cannot take away or abridge a person's liberty without following the procedure prescribed by law; or else, the State would be treated to have violated such a person's fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

8. The question, which confronts us, is: whether in the facts and attending circumstances of the present case, the order of preventive detention, dated 20.2.2014, is a legally valid order of detention and if this order, dated 20.2.2014, is not found to be, in the attending facts and circumstances of the present case, in consonance with law, it would naturally follow that the rejection of the petitioner's representation by the Advisory Board, by order, dated 2.4.2014, was wholly illegal and the order, dated 16.4.2014, passed by the State Government confirming the order of preventive detention of the petitioner, too, are not in accordance with law and must be interfered with.

9. In the light of the question posed above, what is imperative to note is that an order of preventive detention cannot be made against a person, who is in custody, as an accused, in connection with a case unless there is reasonable apprehension that he is likely to be enlarged on bail or otherwise, for, a person, who is already in custody, cannot be further detained by way of preventive detention. It needs to be noted that in the present case, there has to be, therefore, materials to show that a person, sought to be detained, is trying to come out on bail or is likely to be released on bail or otherwise.

10. In the backdrop of the position of law, as indicated above, when we revert to the case at hand, what becomes glaringly noticeable is that in the case at hand, the report of the Superintendent of Police, Sitamarhi, which became the basis of the impugned order of detention, passed against the present petitioner, shows that while in Parihar Police Station Case No. 143 of 2013 aforementioned, the petitioner's application for bail is pending, bail application made by the petitioner, in Bajpatti Police Station Case No. 145 of 2013, has been rejected. This shows that though the petitioner is trying to come out on bail, there was, in the light of the impugned order of detention, no likelihood of the petitioner coming out on bail, when his bail application, made, in connection with Bajpatti Police Station Case. No. 145 of 2013, already stood rejected, even if his application for bail was allowed in Parihar Police Station Case No. 143 of 2013.

11. Situated thus, it becomes clear that the impugned order of detention was made while there was no likelihood of the petitioner being set at liberty either on bail or otherwise

12. Succinctly put the Supreme Court, in *Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Another*, , that in *T.V. Saravanan @ S.A.R. Prasana Venkatachaariar Chaturvedi Vs. State through Secretary and Another*, ; *A. Shanthi (Smt.) v. Govt. of T.N. and Others*, reported in (2006)9 SCC 711 ; *Rajesh Gulati Vs. Govt. of*

N.C.T. of Delhi and Another, , it has been held that if no bail application was pending and the detenu was already, in fact, in jail in connection with a criminal case, the detention order, under the preventive detention law, would be illegal and that the decisions aforesaid appear to have followed the Constitution Bench decision in Haradhan Saha Vs. The State of West Bengal and Others, , wherein it was observed as under:--

"Where the concerned person is " actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or public order."

(Emphasis is supplied)

13. Taking note of its decision in A. Geetha Vs. State of Tamil Nadu and Another,] and Ibrahim Nazeer Vs. State of Tamil Nadu and Another,], the Supreme Court held that the decisions, in A. Geetha (supra) and Ibrahim Nazeer (supra), have laid down that even if no bail application of the petitioner is pending, but if in similar cases, bail has been granted, then, this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order. Having so held in Rekha (supra), the Supreme Court observed and concluded as under:--

"12. In our opinion, if details are given by the Respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the Petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the Petitioner, then the Petitioner is ordinarily granted bail. However. the Respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

13. In our opinion, the detention order in question only contains ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect. Hence, the detention order in question cannot be sustained."

(Emphasis is added)

14. The law, on the above aspect, is very clear and we may, in this regard, refer to the case of Huidrom Konungjao Singh Vs. State of Manipur and Others, , too, wherein the Supreme Court has pointed out that there is no prohibition in law in

passing an order of preventive detention against a person, who is already in custody in connection with a criminal case. However, if the order of detention is challenged, the detaining authority, according to the decision in *Huidrom Konungjao Singh* (supra), has to satisfy the Court on the following aspects:--

"(1) The authority was fully aware of the fact that the detenu was actually in custody;

(2) There was reliable material placed before the detaining authority, on the basis of which it could have reasons to believe that there was real possibility of the detenu's release, on bail and further on being released he would probably indulge in activities, which are prejudicial to public order, and

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary."

15. Resisting the writ petition, it has been submitted, on behalf of the respondents, that the impugned order of detention, approval and also confirmation thereof by the State Government are on valid grounds, the State has genuine concern of maintenance of public order and that in the facts and circumstance of the present case, placing the petitioner in preventive detention was wholly imperative.

16. While considering the rival submissions, it needs to be pointed out that in the light of the fact that there was no likelihood of the petitioner coming out on bail or being set at liberty at the time when the impugned order of detention was passed, the observations made by the Detaining Authority to the effect that the petitioner is trying to come out on bail is incorrect inasmuch as her say is contrary to the materials on record. In the absence of any material, supporting the contention of the Detaining Authority that the petitioner has been trying for bail, in order to indicate that the petitioner was likely to be released on bail, was nothing but a mere ipse dixit of the Detaining Authority and this, by itself, vitiates the impugned order of detention.

17. We may pause at this stage to point out that the impugned order of detention mentions that the petitioner is involved, inter alia, in the commission of offences of murder, whereas not a single case of murder is indicated, in the impugned order of detention, being registered against the petitioner. This is also indicative of the complete non-application of mind of the Detaining Authority.

18. While, however, considering this aspect of the case, we are conscious of the fact that according to Section 12-A of the Bihar Control of Crimes Act, 1981, the grounds of detention are severable and, an order of detention would not be rendered invalid or inoperative merely because one or some of the grounds is/are vague, nonexistent, non-relevant, not connected or not proximately connected with such person, or for any other reason whatsoever.

19. Even if, therefore, we ignore the fact that the impugned order of detention refers incorrectly to cases of murder, wherein petitioner is alleged to be involved,

the fact remains that the bail application of the petitioner, according to the materials placed before the Detaining Authority, had been rejected in connection with Bajpatti Police Station Case No. 145 of 2013, and there was nothing available on record at the time of making of the impugned order of detention that the petitioner was either trying for bail in the same case again or was likely to be released on bail or otherwise in the said case. More so, his released on bail in connection with Parihar Police Station Case No. 143 of 2013, wherein his bail application was pending, could not have let the petitioner come out on bail automatically in the other case, namely, Bajpatti Police Station Case No. 145 of 2013.

20. While considering the above aspects of the case, it needs to be noted that in the case of *Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others*,], a similar issue arose in the sense that in the grounds of detention, it had been mentioned that there was "likelihood of the detenu moving an application for bail" and, hence, detention was necessary. The Supreme Court held, in *Amritlal (supra)*, that there must be cogent material, available before the detaining authority, to show that it was likely that the detenu would be released on bail and it is, then, only that an order of preventive detention could be made against a person, who is already in custody in connection with a criminal case. [See also *N. Meera Rani Vs. Government of Tamil Nadu and Another*, , *Kamarunnissa and Others Vs. Union of India and another*, and *Union of India (UOI) Vs. Paul Manickam and Another*,].

21. The Supreme Court, in *A. Geetha Vs. State of Tamil Nadu and Another*,], has, while referring to its earlier decisions, in *Senthamilselvi Vs. State of Tamil Nadu and Another*,], held as under:--

"...that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be ipse dixit of the detaining authority."

(Emphasis is supplied)

22. In the present case, neither in the impugned order of detention nor in the grounds of detention, any particular material has been referred to in order to show that the petitioner had been trying to come out of jail on bail, in connection with Bajpatti Police Station Case No. 145 of 2013, since after his rejection of the bail in the case aforementioned. There being, in this regard, not even a shred of materials available on record and no material having been referred to, in this regard, in the order of detention or having been furnished with the grounds of detention to the petitioner, one has no option but to agree, and we do agree, with the submission made, on behalf of the petitioner, that the detaining authority's observation, made to the effect that the petitioner "is trying for bail" indicating as if the petitioner was likely to come out on bail, is a mere ipse dixit of the detaining authority concerned and not based on the materials on record.

23. It is trite that when a person is already in custody on allegation of having

committed an offence, he cannot be taken into preventive detention unless there is genuine apprehension that he is likely to be released on bail. In order to, however, reach such a conclusion or draw such an inference, there must be material available, before the detaining authority, indicating that the detenu is likely to be released.

24. In the case at hand, as we have already noted above, there is not even a particle of material on record showing that the petitioner has had been trying to come out of jail on bail, in connection with Bajpatti Police Station Case No. 145 of 2013, since after his rejection of bail in the said case.

25. In the circumstances indicated above, we find considerable force in the submission made, on behalf of the petitioner, that the statement, made by the detaining authority in the impugned order of detention that "the petitioner is trying for bail", indicating thereby that the petitioner was likely to come out on bail, is contrary to the materials on record and cannot but be regarded as mere ipse dixit of the Detaining Authority concerned and this, by itself, renders the impugned order an order not sustainable in the eyes of law.

26. Because of what has been discussed and pointed out above, we find that the impugned order of detention suffers from serious infirmities of law and cannot, therefore, be sustained. Consequently, the impugned order of detention followed by the impugned order of approval and impugned order of confirmation must fail.

27. In the result and for the reasons discussed above, this writ petition succeeds. The impugned order of detention, dated 20.2.2014, the impugned order of approval by the Advisory Board, dated 2.4.2014, and the impugned order of confirmation, dated 16.4.2014, are hereby set aside and quashed.

28. With the above observations and directions, this writ petition shall stand allowed. No order as to costs.

Anjana Mishra, J.

I agree.