

(2009) 03 PAT CK 0035
In the Patna High Court
Case No : Cr.WJC No. 1226 of 2008

Subedar Yadav @ Santan Jee @ Ramashankar Jee	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Arms Act, 1959 — Section 27
Bihar Control of Crimes Act, 1981 — Section 12(2)
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (2009) 3 PLJR 838

Hon'ble Judges : J.B. Koshy, C.J; Ravi Ranjan, J

Bench : Division Bench

Advocate : Kamendra Prasad Singh, for the Appellant; Shashi Bhushan Kumar and Rajeev Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. The order of detention against the petitioner was passed by the District Magistrate, Aurangabad u/s 12(2) of the Bihar Control of Crimes Act, 1981 on 8.6.2008. The petitioner against his detention order filed a representation through proper channel but the said representation is stated to have been disposed of after a delay of ten days. Learned counsel for the petitioner in support of his contention cited decision of the Supreme Court rendered in the case of Rajammal Vs. State of Tamil Nadu and Another, wherein the Apex Court did not accept the explanation for delay of five days and set aside the detention by holding that the delay remained unexplained and such unexplained delay vitiates further detention of detenu and, accordingly, detenu was set-at large forthwith.

2. Every case has to be considered on its own facts and a straightjacket formula cannot be applied in every case regarding explanation for delay in disposal of a case. The Hon'ble Apex Court in the case of D. Anuradha Vs. Jt. Secretary and Another, held that delay of more than 100 days due to non-availability of

translated copy of representation which was in Tamil language is unavoidable and it is satisfactorily explained. A similar view was taken in another decision of the Apex Court in the case of Lilly vs. Chief Secretary to Govt. of T.N. and Others, (2004)13 SCC 668, wherein also the contention as to inordinate delay in considering the representation was held to be not sustainable on the facts of that case.

3. Question is as to whether the delay in disposal of the representation in the present case is valid or not.

4. In the present case facts of the case are necessary to be looked into. The petitioner was charge-sheeted in Madanpur P.S. Case No. 170 of 2004, Madanpur P.S. Case No. 68 of 2004 and Madanpur P.S. Case No. 45 of 2006. He was allowed bail in Madanpur P.S. Case No. 45 of 2006 and Madanpur P.S. Case No. 68 of 2004. In Madanpur P.S. Case No. 170 of 2004, he was charge-sheeted and tried alongwith another for the offences punishable u/s 302/34 of the Indian Penal Code and 27 of the Arms Act for committing murder of Brijmohan Yadav. In that case it was found by the trial court that charges were not proved beyond reasonable doubt. Other cases are still pending against the petitioner. They are Madanpur P.S. Case No. 73 of 1987 registered for the offence under Sections 147, 148, 149, 302, 307, 324, 436, 380, 120B, 411 of the Indian Penal Code and 27 of the Arms Act, Madanpur P.S. Case No. 4 of 1988 registered for the offence under Sections 147, 353, 307 of the Indian Penal Code and 27 of the Arms Act, Madanpur P.S. Case No. 106 of 1993 registered for the offence under Sections 147, 148, 149, 364, 353, 307, 384, 323 of the Indian Penal Code and 27 of the Arms Act and Madanpur P.S. Case No. 12 of 1987 registered for the offence u/s 395 of the Indian Penal Code.

5. Though reason for causing delay has not been explained in detail in the affidavit but from the records, it is clear that on receipt of the representation the Deputy Secretary Home (Police) Department requested the District Magistrate to give his comments on 27.6.2008 and when the comments were not received, he sent a reminder on 8.7.2008 to the District Magistrate asking to give his comments and then the District Magistrate asked comments from the office of the Superintendent of Police on 9.7.2009 and on the same day he received the comments and thereafter on 10.7.2008 comments were sent to the Deputy Secretary Home (Police) Department and after considering the same on 24.7.2008 the representation was rejected.

6. Considering these facts, we are of the opinion that ten days delay in disposal of the representation has reasonably been explained. Merely ten days delay, cannot be a ground to set aside the order of detention passed in this case considering the nature of the allegations and explanation for the detention. In the circumstances, the writ petition is dismissed.