
(2002) 03 JH CK 0100
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 178 of 2001

Suresh Nayak

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 22(1)(2)

Citation : (2002) CRLJ 2841 : (2002) 0 AIR JHAR HCR 610 : (2002) 1 JCR 419 : (2002) JLJR 1 794

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Binod Kumar Dubey, V.K. Sharma and Binodanand Tiwary, for the Appellant; H.K. Mahto, G.P. III, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—This writ application under Article 226 of the Constitution of India has been filed for setting aside the order contained in Annexure-2 to this application dated 1.9.2001 by which, the Deputy Secretary to the Government, in exercise of the power u/s 22(1)(2) of the Bihar Control of Crimes Act, 1981, has directed the detention of the petitioner in jail till 20.7.2002.

2. The petitioner was remanded in jail in Bagodar P.S. Case No. 159/1999 u/s 414. IPC in which he was granted bail by the Court below and he was also implicated in Hazaribagh (Sadar) P.S. Case No. 323/1999 in which he was granted bail by this Court. Subsequently, it is alleged that he was implicated as an accused in another case but in all those cases he was granted bail, but to defeat the judicial orders, the Deputy Secretary, vide, order dated 16.7.2001 passed an order for his detention under the aforesaid Act for three months confirming the order of the District Magistrate dated 5.7.2001. That period of detention was further extended for a period till 20.7.2002, by the Deputy Secretary of the Government. It is further submitted that though in the earlier

report issued by the Deputy Commissioner, the District Magistrate had passed the order for three months detention on the materials against, which was extended further till 20.7.2002 and in that order. Annexure-2, no reason or cause has been stated and the respondent-State confirmed the order in a mechanical way which is not sustainable in law. It transpires that on 5.7.2001 the District Magistrate, Hazaribagh, has also passed an order for the detention of the petitioner, which is Annexure-3. The petitioner filed representation before the respondent-authority and stated these facts, clearly intimating that the cases referred to in the detention order were not correct because absolutely there was no evidence to connect the petitioner with the alleged crime. These representations are at Annexure-4 & 4/1. It is further stated that in Bagodar P.S. Case No. 159/1999 dated 31.8.99 he was not named but his name was subsequently added for the purpose of false implication. So far Gorhar P.S. Case No. 14/ 1998 u/s 379, IPC is concerned, petitioner's case is that he was not named and no charge-sheet was submitted against him but in the detention report the police wrongly stated that he was involved in that case also. The FIR of Gorhar P.S. Case No. 14/98 has been annexed as Annexure-6. With regard to Gorhar P.S. Case No. 27/1998 u/s 379, IPC, it has been submitted by the petitioner that he was not named in the FIR, but subsequently charge-sheet was submitted implicating the petitioner with ulterior motive. The FIR of this case is Annexure-7. With regard to Hazaribagh Sadar P.S. Case No. 323 of 1999 u/s 395, IPC, it has been submitted by the petitioner that he was not named in the FIR, but subsequently charge-sheet was submitted implicating the petitioner due to ulterior motive. It is further stated that the petitioner is not an accused in Gorhar P.S. Case No. 17/ 1998. The FIR of these two cases, Hazaribagh (Sadar) P.S. Case No. 323/99 and Gorhar P.S. Case No. 17/98 are Annexure-8 and 8/1. It is the further case of the petitioner that in Hazaribagh (Sadar) P.S. Case No. 323/99 he was granted bail by this Court and in Gorhar Bagodar P.S. case the petitioner was granted bail by the trial Court itself.

3. The grounds on which the detention order have been challenged are that (i) it has been passed without verifying the facts and without looking to the documents which are the basis of passing of the order (ii) it may have been passed only to defeat the judicial orders as the petitioner was released on bail by the different Courts and (iii) as the petitioner does not come within the purview of Section 2 of the Bihar Control of Crimes Act, the detention order is beyond the ambit of Section 12 of the Bihar Control of Crimes Act.

4. The respondent Nos. 2 and 3, i.e. the Deputy Commissioner and the Deputy Secretary to the Government of Jharkhand, have filed counter-affidavits stating, inter alia, that the impugned order is within the four-corners of the ambit and the same has been arrived at in conformity with the material facts and relevant documents on which the detention of the petitioner is just and reasonable.

5. Before I proceed further, it is worthwhile to consider the grounds taken by the Deputy Commissioner, Giridih, for detaining the petitioner in custody. On perusal

of these documents, it appears that the S.P. wrote a letter on 22.2.2001 to the D.C. stating that the notorious criminal Suresh Nayak has become the synonym of crime in the district and in the vicinity of Bagodhor of Giridih district and Gorhar P.S. of Hazaribagh district he along with other criminals has created terror in this entire area. The modus operandi of these criminals is to commit theft of articles/goods from the running trucks after tearing the cover on the trucks and because of this, there is a panic amongst the truck drivers and transporters. It is further stated that recently he along with his associates has looted one truck of Gati Transport within the Hazaribagh Sadar P.S. and another truck belonging to the same transporters within the Ramgarh P.S. and in this connection, he was in judicial custody, but as per the report of the S.P. dated 17.6.2001, the criminal has succeeded in obtaining bail on 24.4.2001 from the Court and on his being released on bail, there has been increase in the crime in the area on Bagodar P.S. and chances of antisocial activities have grossly increased in the area of this P.S. It was further stated that because of the crime committed by him the public order is being affected and the police administration is feeling great difficulty in maintaining the social order. Till he was in jail, there was peace in the area but after his release from jail, there is gross apprehension of disturbance of public order.

6. It was also stated in that report that in Bagodar P.S. Case No. 159/1999 u/s 414/34, IPC, the petitioner is named along with others and that was found during investigation and consequently a charge-sheet No. 222/1999 dated 24.12.999 was filed in the Court.

7. Another case referred to is the Hazari-bagh Sadar P.S. Case No. 323/99 u/s 395, IPC which was registered against unknown and in this case, charge-sheet was submitted after the looted articles had been recovered in relation to the Bagodar P.S. Case No. 159/99 (supra). Three cases being Gorhar P.S. Case No. 27/1908 u/s 395. IPC Gorhar P.S. Case No. 17/1998 u/s 379. IPC and Goshar P.S. Case No. 14/98 were cited in support of the past criminal history of this petitioner and it is also stated that in all the cases, the petitioner was charge-sheeted. Considering all these circumstances and also considering that all the offences in which the petitioner is involved, comes under Chapter-XV and XVI of the Indian Penal Code and public order is being disturbed by him and the provisions of several law are not proving effective against him and as his activities are not being continued even after submission of the charge-sheet against him, it is clear that he is an anti-social element and therefore, action under the provisions of Bihar Control of Crimes Order is resorted to and consequently the impugned order of detention of the petitioner was passed.

8. The annexures filed by and on behalf of the petitioner gives a detailed picture as to in which cases the petitioner is named and in which he is not named in the FIR. The petitioner has denied that he was charge-sheeted in three cases.

9. In the aforesaid circumstances, the question is whether the authority, i.e. the State Government passed the order without application of mind, that is to say

whether the detention is vitiated by non-application of mind and whether the detention is illegal and violative of Article 21 of the Constitution of India.

10. So far the subjective satisfaction of the District Magistrate is concerned, it cannot be looked into. Moreover, while passing the original order of detention, the District Magistrate derived his satisfaction from the reports of the S.P. When the basic order of detention is passed by the District Magistrate, which was passed on his satisfaction and it was duly confirmed as per the provisions of the Act by the State Government, then there appears to be no illegality in the original order. Moreover, in this case, the original order of detention passed by the District Magistrate is not under challenge. The next question, therefore, arises whether the order of the State Government was passed by non-application of mind, i.e. the order contained in Annexure-2. The State Government definitely derived the basis for passing the order from the order of the District Magistrate. Thereafter, under the Scheme of the Act if the detainee files a representation, that is placed before the Advisory Board and after the recommendation of the Advisory Board, the Government takes steps in accordance with Section 21 of the Act. The very scheme of the Act shows that if the District Magistrate has passed any order and that has been confirmed by the State Government and against that order, if a representation has been filed which has been considered by the Advisory Board, then the State Government is under a legal liability to Act as per the report of the Advisory Board and if the Advisory Board gives its opinion that there is sufficient cause for the detention then the State Government has a definite power u/s 21 of the Act, not only to confirm the order passed by the District Magistrate but also to continue the detention of the person concerned for such period as it thinks fit. Thus, much of the order of the State depends upon the report of the Advisory Board. The Advisory Board consists of the sitting Retd. Judge of the High Court. Therefore, it cannot be said that the Advisory Board did not apply its judicial mind. Moreover, this is not under challenge. So if the Advisory Board, after application of mind, reports against the detainee then in that circumstance, u/s 21 of the Act the Government is not left with any alternative. It has to Act according to the report. Though the word, "may" has been used u/s 21(1) of the Act, but does not mean that unless any other circumstances are there, the Government, on its own, will differ from the recommendation of the Advisory Board. So it cannot be said that the act of the Government is without considering the report of the Advisory Board or it has been passed without any basis. Thus, it cannot be said that there has been non-application of mind on the part of the Government. On perusal of the record, it transpires that this Court has called for a copy of the report of the Advisory Board by order dated 5.2.2002 and the State, in compliance of that, has produced the same on 14.2.2002. It appears that the Advisory Board in Reference Case No. 16/2001, made the recommendation that there were sufficient materials on record for detention of Suresh Nayak under the Act. It appears from the said report that the detainee was produced before the Board and he has pleaded innocent to the allegations made against him and prayed for

mercy. Thus, it cannot be said that before the Advisory Board, the petitioner did not appear and not had pleaded his case. Thus, there is no violation of the principles of natural justice. On behalf of the petitioner, a decision reported in *Asha Keshavrao Bhosale Vs. Union of India (UOI) and Another*, was referred to, but in that case also the plea of the detainee was not allowed because it was considered by the Court that when the detainee was produced before the Advisory Board as he was sufficient to make his defence and place his case and therefore, no prejudice was caused. There is no such pleadings in this case that the detainee was prejudiced in his defence before the Advisory Board. Thus, the decision of the Apex Court above does not help the petitioner, rather it goes against him.

11. Thus, it cannot be concluded that there was non-application of mind on the part of the State, as it acted on the basis of the report of the Advisory Board before passing the impugned order at Annexure-2 itself. Therefore, this ground to challenge the detention order is not sustainable. The question aforesaid is answered against the petitioner and in favour of the respondents.

12. The next question is whether the crimes that are attributed to the petitioner could have been contained by ordinary laws or whether the crimes committed by him come under the ambit of the public order. The total picture that emerges on perusal of the grounds of detention shows that a sizeable class of the public were definitely terrorised by the act of the petitioner and his associates. There is confession of other accused before the police by his associates. Though this evidence is definitely not legally admissible but definitely is a circumstances as to how this petitioner along with his associates operated in the area. The trucks carrying goods on the National Highway were the target of their attack. Naturally such act would tell upon the transporters and so, there was serious danger to trade and business. Obviously, the result of such acts is that even unconcerned truck drivers felt panicky and did not like to pass through the National High Way. This act definitely as it concerns even the unknown persons and makes a particular class of people, i.e. the transporters, truck drivers panicky and a serious threat of panic and terror emanates from the acts of the petitioner and his associates. In that circumstances, those offences, in my opinion, disturbs the public order. Therefore, it cannot be said that the act of the petitioner would have been contained by the general laws and the petitioner does not fall within the purview of Section 2 of the Act and the order of detention is not to defeat the judicial orders in favour of the petitioner.

13. That State has passed the order of detention till 20.7.2002 and this period of detention is not in excess of the power vested in the Government u/s 22 of the Act.

14. In the circumstances discussed above, the order of the State Government contained in Annexure-2 is valid and legal orders and has been passed in exercise of the power vested in the Government and is not beyond the Jurisdiction or in excess of the jurisdiction. The order does not violate the liberty

of a person guaranteed under Article 21 of the Constitution of India. Consequently the writ application fails.

15. This writ application is dismissed.