

(2003) 09 PAT CK 0065

In the Patna High Court

Case No : Criminal W.J.C. No. 164 of 2003

Tuntun Singh @ Sunil Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 12, 12(2), 12(3), 21, 22

Citation : (2004) 1 PLJR 324

Hon'ble Judges : S.N. Jha, J;B.N.P. Singh, J

Bench : Division Bench

Advocate : Subhash Kumar Singh, for the Appellant; Amar Nath Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha and B.N.P. Singh, JJ.—The Petitioner has been detained by the District Magistrate, Samastipur u/s 12(2) of the Bihar Control of Crimes Act, 1981 vide Order No. 81/CCA dated 20.1.2003. The detention was approved by the State Government in terms of Section 12(3) of the Act on 25.1.2003 and later confirmed u/s 21 read with Section 22 of the Act on 15.3.2003.

2. The solitary ground on which the detention is challenged is that there is no proximity between the alleged acts and the detention, that is, delay in making detention order. It is submitted that as per the grounds of detention served along with the detention order the Petitioner was detained on the basis of two events giving rise to Bibhutipur PS case No. 13/2002 dated 1.2.2002 and Bibhutipur PS Case No. 139/2001 dated 16.11.2001. The object of detention being immediate arrest of the person concerned so as to prevent him from committing acts prejudicial to maintenance of public order, the detaining authority, if it was so satisfied that the Petitioner could not be otherwise prevented from committing acts prejudicial to maintenance of public order except by such detention he should have made the order soon after the Petitioner's committing the alleged acts on 16.11.2001 and 1.2.2002. Coming as it did after about one year

reckoned from even the second occurrence, the detention falls outside the mischief of Section 12 of the Act.

3. The submission of the Counsel at the first instance appears to be attractive but in the facts and circumstances does not have any substance. The case of the Respondents is that chargesheet in Bibhutipur PS case No. 13/2002 was submitted on 3.5.2002 while chargesheet in Bibhutipur PS Case No. 139/2001 was submitted on 23.6.2002. The Petitioner was in custody in connection with those cases until he got bail in Bibhutipur PS Case No. 139/2001 and found taking steps to secure bail in the other case. In the circumstances, on receipt of report to this effect the District Magistrate, Samastipur felt satisfied that in the likelihood of the Petitioner's release on bail in Bibhutipur PS Case No. 13/2002 he may commit acts prejudicial to maintenance of the public order which could not be prevented than by detaining him under preventive custody u/s 12 of the Control of Crimes Act.

4. Shri Amar Nath Singh, learned Standing Counsel, submitted that it is well settled that preventive detention depends upon subjective satisfaction of the detaining authority with which the court cannot interfere while making judicial review of the action. According to the Counsel, notwithstanding that the occurrence in the two cases had taken place on 16.11.2001 and 1.2.2002, so long as the Petitioner was in custody there was perhaps no occasion to commit any act prejudicial to maintenance of public order, it was only after he got bail in one of the cases and it came to the notice of the District Magistrate that the Petitioner was taking steps to get bail in the other case too, that occasion arose for preventive detention of the Petitioner. We find substance in the submission of the learned Standing Counsel.

5. The relevant facts briefly noted above have been mentioned not only in the impugned order but also reiterated in the affidavit sworn on behalf of the District Magistrate about his subjective satisfaction to put the Petitioner under preventive detention in order to prevent him from committing acts prejudicial to maintenance of public order. It would not be out of place to mention that while in one of the cases the Petitioner was alleged to have committed murder in broad day light when the deceased was sitting on Satyagrah and addressing public meeting, in the other case he was alleged to have demanded extortion money i.e. indulged in rangdari. Prima facie, the acts appear such as likely to create fear psychosis and disturb the even tempo of life, and therefore subjective satisfaction of the detaining authority cannot be said to be arbitrary. It is well known that while making judicial review of any action of the administrative authority, the Court cannot sit as appellate authority nor can weigh the quantum of materials on which the authority had reached the satisfaction.

6. The only point raised on behalf of the Petitioner having thus been found to be without any substance this petition must fail and the same is accordingly dismissed.