

(2007) 03 PAT CK 0034
In the Patna High Court
Case No : Cr.WJC No. 826 of 2006

Vikram Singh @ Vicky Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Arms Act, 1959 — Section 12(2), 27
Bihar Control of Crimes Act, 1981 — Section 12(2)
Penal Code, 1860 (IPC) — Section 302, 307, 34, 341

Citation : (2007) PLJR 298

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mrs. Anjana Prakash, learned counsel for the petitioner and Mr. Dhurandhar Prasad Choudhary learned S.C.II. This habeas corpus application is directed against the order of detention passed against the petitioner under the provisions of Section 12 (2) of the Bihar Control of Crimes Act, 1981 (hereinafter to be referred to as the "Act") as contained in annexure-1.

2. It is submitted by Mrs. Anjana Prakash, learned counsel for the petitioner that the petitioner was detained by virtue of the order dated 3.7.2006 on three grounds not pertaining to the maintenance of public order and, therefore, the order impugned is not sustainable in law. It is further contended that there was undue delay in disposal of the representation of the petitioner filed on 27.7.2006.

3. A counter affidavit has been filed on behalf of the Home (Police) Department, Govt. of Bihar, Patna justifying the detention of the petitioner.

4. The grounds of detention as disclosed in the order of detention pertain to Dhamdaha (Sarsi) P.S. Case No. 12/2004 for offences u/ss 341 and 307/34 IPC read with section 27 of the Arms Act. Banmankhi (Sarsi) P.S. Case No. 95/2005 for offences u/s 302 IPC and Banmankhi (Sarsi) P.S. Case No. 208/2005 for

offences u/s 302/34 IPC and section 27 of the Arms Act.

5. From the order of detention it appears that the offences committed by the petitioner pertain to maintenance of law and order and not that of public order. Besides the grounds of detention no other ground has been shown as antecedents of the petitioner showing his involvement in criminal activities.

6. From the counter affidavit filed on behalf of the Home (Police) Department, Govt. of Bihar, Patna it would appear that the representation so filed by the petitioner on 27.7.2006 was ultimately rejected on 9.8.2006. In paragraph 9 of the counter affidavit some explanation has been given from 2.8.2006 to 9.8.2006 so far as the representation of the petitioner is concerned, but no whisper has been made as to when his representation was received and how it was delayed from the very date of its receipt in the concerned Department.

7. This Court faced with this situation, called for the records of the case from which it appears that the representation filed by the petitioner was received on 27.7.2006 at 5 P.M. but the explanation from 27.7.2006 upto 1st August, 2006 has not been given in the counter affidavit as to under what circumstances the representation as such was not attended to from 27.7.2006 itself.

8. Law requires that the representation so filed by a detainee must be disposed of with utmost expedition and each days delay should satisfactorily be explained.

9. It appears to be a case of unexplained delay of at least six days from the date of receipt of the representation.

10. The detention of the petitioner, in this view of the matter, vitiates in view of the decisions rendered in the cases of Umesh Singh Vs. State of Bihar and Others .

11. Besides this question, we are also of the view that the grounds of detention, in no way, go to show that the activities of the detainee/petitioner was prejudicial to maintenance of public order.

12. A person may be detained under the provisions of section 12 (2) of the Act in case his activities are found to be prejudicial to maintenance of public order. The individual act of commission of offence by the petitioner in the given facts and circumstances of the case appears to be relating to law and order and not public order.

13. For the reasons aforementioned. therefore, the order of detention is not sustainable in law. In the result, this application is allowed, order of detention passed against the petitioner is set aside and the petitioner is directed to be set at liberty, if not required in any other case.