

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.432 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

=====

Amit Kumar Yadav S/o Ram Chandra Pandey R/o Village- Sakra Paharpur, P.S.-
Bakhtiarpur (Balwahat O.P.), District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home (Police) Department Bihar, Patna
2. The District Magistrate, Saharsa
3. The Superintendent of Police, Saharsa
4. The Jail Superintendent of Police, Saharsa

.... Respondent/s

=====

Appearance :

For the Petitioner : Mr. Shiv Shankar Sharma
For the State : Mr. P.N.Sharma, AC to AG

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 10-07-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the order dated
27.2.2015 passed by the District Magistrate, Saharsa and also to set
aside the order dated 23.3.2015 issued by the Home (Police)
Department, Government of Bihar by which direction was given
that the petitioner will remain in detention till 26.2.2016.

On the basis of a report submitted by the



Superintendent of Police, Saharsa, the District Magistrate, Saharsa exercising powers conferred by Section 12(2) of the Bihar Control of Crimes Act, 1981 directed detention of the petitioner in jail by his order dated 27.2.2015 referring to nine criminal cases having been lodged against the petitioner, three of them of the year 2014, five of the year 2012 and one of the year 2009, in eight of which charge sheets have already been submitted. Detailed description of the two recent criminal cases under Sections 392, 394, 302 and 412 of the Indian Penal Code and Sections 25(1-B)A, 26 and 35 of the Arms Act were also mentioned in the order, on the basis of which the District Magistrate came to the conclusion that the petitioner is a veteran anti-social element and his name has become a terror in the district of Saharsa and further that although he is in jail but trying to get out on bail and if he gets bail, public order will be seriously affected. The said order was approved by the State Government by order dated 9.3.2015 and in the meantime the grounds of detention was served upon the petitioner and he filed his representation to the State Government which was also considered by the State Government. His matter was brought before the Advisory Board which has also held that sufficient grounds exist for his detention. Thereafter by order dated 23.3.2015 the State Government has directed that the petitioner

will remain in detention till 26.2.2016. Aggrieved by the same, the petitioner has approached this Court.

Although, in the writ petition various facts and issues have been raised but learned counsel for the petitioner has essentially confined his submissions to two grounds, namely that in three out of nine criminal cases referred to by the District Magistrate, the petitioner has already been acquitted.

It is also submitted by learned counsel that the order of the District Magistrate is bad for the reason that he states that the petitioner is trying to get out on bail and if he gets out on bail, public order will be seriously affected which does not appear to be correct approach in the issue as it is well known that the action of the Courts do not prejudice any one. Moreover, it is submitted by learned counsel that as a matter of fact, the bail of the petitioner has been refused up-to this Court and thus the said apprehension of the District Magistrate was also uncalled for and the petitioner being already in jail in the said criminal case, no purpose would be served by keeping him behind bars by the detention order under the Bihar Control of Crimes Act.

Issue regarding delay has also been raised by the petitioner but the same has been met in the counter affidavits filed separately on behalf of the State and the District Magistrate. From

perusal of the facts stated therein it is evident that there has been no delay in consideration of the case of the petitioner or his representation.

So far as the stand of the petitioner regarding acquittal in three criminal cases and non-mentioning of the same in the order of the District Magistrate is concerned, the same cannot ultimately enure to the benefit of the petitioner considering the fact that the District Magistrate has referred in detail only to the two recent cases lodged against the petitioner taking into note the history of crime being committed by the petitioner in Saharsa and its adjacent areas. The acquittal of the petitioner in three cases has been merely referred to in para-13 of the writ petition but the orders passed have not been brought on the record to show as to the ground and nature of acquittal. Thus, nothing can really depend upon the said acquittal and the history of commission of crimes by the petitioner cannot be ignored merely on the basis of such bland statement.

So far as the reference to the fact in the impugned order, of the petitioner trying to get out on bail and if he gets out on bail public order will be seriously affected, is concerned, the same is merely a factual statement indicating the seriousness of the matter and the prejudice to public order that such release may have

caused. The fact that the petitioner is also in jail in a criminal case would not affect the detention order which has been passed apprehending the affect on public order in case the petitioner is granted bail. The same cannot be a ground for setting aside the detention order.

For the aforesaid reasons, we see no merit in the case. The writ application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

U			
---	--	--	--