

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1150 of 2014

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Makhru Singh @ Makhru Sardar @ Anil Singh son of Nakat Singh, resident of village-Khutaha Chetan Tola, P.S. Barahiya, District-Lakhisarai at present village-Balgudar, P.S. and District-Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar,
2. Secretary, Department of Home (Police), Government of Bihar, Patna,
3. Under Secretary, Department of Home (Police), Government of Bihar, Patna
4. District Magistrate, Lakhisarai &
5. Superintendent, Lakhisarai Jail, Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner : Shri Ajay Thakur, Advocate &
Shri Nilesh Kumar, Advocate.

For the Respondent/s : Shri Vikas Kumar, Advocate.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

4 07-01-2015

Heard.

2. The present petition, seeking the issuance of an appropriate writ either in the nature of habeas corpus or in the nature of certiorari, has been filed by petitioner Makhru Singh @ Makhru Sardar @ Anil Singh with further relief of quashing the order of detention contained in Annexure-1 passed by the District Magistrate, Lakhisarai on 23.09.2014 which order was approved by the Govt. of Bihar by its order dated the 30th of September, 2014 (Annexure-2) and finally after considering all the facts and circumstances submitted to the Govt. of Bihar by the District

Magistrate, Lakhisarai, the order of detention of the petitioner for a period of twelve months starting from the 23rd of September, 2014 to the 22nd of September, 2015 (Annexure-3).

3. It appears that the District Magistrate, Lakhisarai received letter no.1407/C.R. dated 04.06.2014 from the Superintendent of Police, Lakhisarai indicating that the petitioner who was already in custody in Lakhisarai P.S.Case No.06 of 2014 was attempting to come out of jail by being enlarged by virtue of an order of bail to be obtained by the petitioner and the same shall not be conducive to the peace and tranquility as also the public order in the society. The order impugned herein (Annexure-1) indicates that the notice was issued to the petitioner before passing the order detention against the petitioner, who appeared through his counsel. After hearing the parties, i.e., the counsel for the petitioner and the Public Prosecutor, Lakhisarai, the District Magistrate, Lakhisarai passed the impugned order.

While passing the order, the District Magistrate, Lakhisarai took into account the two substantive criminal cases as also a Station Diary Entry. The first substantive case was Surjagarha P.S.Case No.116 of 2012 under Section 414 IPC. The second was Lakhisarai P.S.Case No.06 of 2014 under Sections 307,384,385 and 386 etc IPC and the Station Diary Entry was



made on the basis of the report made by the Probationary Sub-Inspector of Police, Satyendra Sharma who after returning from patrolling duty noted that the petitioner, who was in custody was manipulating and sending threatenings from inside the jail to the settlees of sand-mines for paying up extortion money to his relatives, else to reap serious consequences. In addition to the above three grounds, the District Magistrate, Lakhisarai had also considered the antecedents of 30 criminal cases which had been registered at different point of time, from the year 1999 to 2000, in Lakhisarai and Barahiya police stations as also in police stations Surjagarha and Chanan and further noted that out of 27 criminal cases, the petitioner had obtained order of acquittal in as many as 18 cases. But still, the District Magistrate, Lakhisarai went on to draw his satisfaction on the materials placed before him by the Superintendent of Police, Lakhisarai through his report and held that the petitioner who was attempting to obtain an order of bail as was submitted before the District Magistrate, Lakhisarai by the very counsel of the petitioner, after being enlarged on bail may be a threat to the public order and it was desirable that his detention be ordered in spite of the petitioner was in custody.

4. We have already noted that the order passed by the District Magistrate, Lakhisarai initially was approved by the Govt.



of Bihar vide Annexure-2 and finally after considering the facts and other materials placed before the Government the order under Section 22 of the Bihar Control of Crimes Act was passed by the Govt. of Bihar which is contained in Annexure-3, dated 20th of October, 2014. It needs no mention that the final order of detention passed under Section 22 of the said Act was passed only after the State Govt. had received a recommendation from the State Advisory Board and before that it had rejected the representation against his detention, made by the petitioner.

5. Addressing us on the merits of the order, Sri Ajay Thakur, learned counsel appearing on behalf of the petitioner drew our attention to Annexure-5 to the present petition which is an order dated 04.02.2013 passed by a similar Bench of the Court in a similar nature of petition. The order indicates that the petitioner had been detained earlier by the same detaining authority, i.e., the District Magistrate, Lakhisarai by an order passed on 06.08.2012. It was pointed out to us by Sri Thakur that one of the grounds which had been used by the District Magistrate, Lakhisarai to pass the earlier detention order dated 06.08.2012 was the same Surjagarha P.S.Case No.116 of 2012 under Section 414 IPC. Contention is that utilizing the same substantive criminal case one again as one of the grounds for passing the next detention order



was indicative of not only the non-application of mind by the District Magistrate, Lakhisarai but was falling very much short of the Supreme Court decision rendered in the case of ***Chhagan Bhagwan Kahar v. N.L.Kalna and others reported in AIR 1989 SC 1234***. The other submission was that the third ground which was the Station Diary Entry No.598 recorded in Lakhisarai police station on 26.05.2014 was of no consequence as it was not only vague but lacked in details as regards the persons who had been sent words by the petitioner to pay up the extortion money for continuing the sand mining, else to reap the consequences. The Submission was that the very ground which appears at page-15 of the present petition indicates that no one was ready to come forward either to disclose his identity or other details as regards receipt of threatening or the verbal notice to pay up the extortion money from the petitioner who was confined in custody. Submission in this behalf was that vagueness of the ground is fatal to the order of detention as appears laid down by the Supreme Court in the case of ***Jahangirkhan Fazalkhan Pathan v. The Police Commissioner, Ahmedabad and another reported in AIR 1989 SC 1812***. Lastly, it was contended that the solitary ground, i.e., Lakhisarai P.S.Case No.06 of 2014 under Sections 384,386 and 307, etc IPC may in itself be appearing quite a serious ground



which may justify the detention order, but again the whole order suffers from serious non-application of mind on account of having not appropriately considered the antecedents of the petitioner. It was contended that the very order indicated that out of 27 cases which are listed almost at the end of the detention order, the petitioner had been acquitted in as many as 18 cases. The non-consideration of this aspect as regards the antecedent of the petitioner was yet again considered by the Supreme Court in the case of ***Ramesh v. State of Gujarat and others reported in AIR 1989 SC 1881*** to have vitiated the order of detention.

6. Sri Vikash Kumar, learned counsel appearing on behalf of the respondents-State attempted valiantly to convince us that the detention order was still to be upheld by virtue of the solitary instance for passing it. It was contended that Lakhisarai P.S.Case No.06 of 2014 depicts such serious acts of the petitioner which had serious impact on the public order and well being of the society and it was enough in itself to justify the detention of the petitioner. Sri Kumar also attempted to convince us that Station Diary Entry No.598 dated 26.05.2014 may not be containing necessary details as regards the names of persons, the place or dates where they had been threatened or asked to pay up the extortion, but the report was made by the police officer and it has

to be respected so as to upholding the order of detention.

7. Undeniably, the order of detention of the petitioner was passed by the District Magistrate, Lakhisarai while the petitioner was in custody. It is not unknown that detention orders could be passed against a person who was still continuing confined in custody by virtue of a judicial order, if the detaining authority was satisfied after considering the facts and materials placed before him that there was likelihood of the person coming out of the prison after obtaining an order of bail from some competent court and further that such release of the person may be detrimental to the public order and peace and tranquility in the society. What the Courts have to consider is that the subjectivity of the satisfaction and the materials which were considered by the detaining authority in that behalf, had appropriately been considered by the detaining authority. The order of detention in such cases has to be passed considering the facts and circumstances of the case which necessarily have to vary from one case to the other. However, while passing the detention order the application of mind of the detaining authority is one aspect which has to be considered by the Court and we find that the earlier detention order which was passed against the petitioner by the same detaining authority on 06.08.2012 was challenged before this



Court in Cr.W.J.C.No.1058 of 2012 and the same was disposed of by order dated 04.02.2013. Paragraph-3 of that order, placed on record of the present petition, indicates that Surjagarha P.S.Case No.116 of 2012 was one of the grounds which had been used by the District Magistrate, Lakhisarai at the earlier occasion to draw satisfaction about the likelihood of the public order being adversely affected on account of the release of the petitioner. The order passed in Cr.W.J.C.No.1058 of 2012 by the Division Bench of this Court indicates that the detention order was quashed. What we find from the impugned order is that the same Surjagarha P.S.Case No.116 of 2012 has been used as one of the three grounds for drawing the satisfaction. The Supreme Court had before them a similar situation in the case of ***Chhagan Bhagwan Kahar*** (supra) in which successive detention orders had been passed by the detaining authority and while passing those orders, the grounds which was taken into consideration to pass the first order was again taken into consideration to pass the second order of detention. The Supreme Court laid down that taking into account the same ground which had earlier been taken into account while passing the first detention order vitiated the second detention order on the ground that the detaining authority had taken into consideration the grounds of earlier detention order



along with other materials. The Supreme Court may not have pointed out that it shows non-application of mind but we have all the reasons to note that in spite of having passed the earlier detention order dated 06.08.2012 against the petitioner on the same ground, if the District Magistrate, Lakhisarai was utilizing the same case for drawing his satisfaction, then it could be also a case of non-application of mind and from that angle also the order of detention presently questioned before us appears vitiated.

8. The other grounds which were taken into account were Lakhisarai P.S.Case No.06 of 2014 and Lakhisarai Police Station Case Diary Entry No.598 dated 26.05.2014. The facts upon which the substantive case vide Lakhisarai P.S.Case No.06 of 2014 was registered were really as serious as to impact the public order and to start smooth and peaceful flow of daily life in the society. We do not have any doubt about that, but the third ground, i.e., Station Diary registered in Lakhisarai Police Station was as vague as to contain no names of the persons who had been threatened or asked to pay up extortion money if they were desirous of carrying out the sand mines and further lacked details as to whether and on which date they had received those threatenings. This ground appears not only vague but uncertain, lacking in necessary details so as to justify it to be used as a



ground. In our opinion, the Station Diary Entry could also be a ground for utilizing it for passing the detention order, if it fulfils the requirement as regards the person who had been threatened or the group of persons who had been threatened and other details of those persons regarding place or residence, time and date where they had been served threatening notice verbally or otherwise.

9. Here in the present case, it was too vague to set out any enquiry as regards the truthfulness of those informations. If the informations were not verifiable, if those could not have been gone into by any reasonable person through an enquiry, then those could not be said to be the satisfactory grounds which could be acceptable to any reasonable person to draw satisfaction. The cumulative use of two non-existence grounds which were not available to the detaining authority while using Surjagarha P.S.Case No.116 of 2012 as also the Station Diary Entry No.598 dated 26.05.2014 of Lakhisarai Police Station, in our opinion, were such as to vitiate the whole detention order, in spite of the fact that the solitary instance of Lakhisarai P.S.Case No.06 of 2014 could have been a very serious criminal activity reported against the petitioner which could have impacted the public order to the maximum as regards the facts of the case which appears narrated in the impugned order.

10. The learned counsel appearing on behalf of the petitioner was drawing our attention to the definition of anti-social element as contained in Section 2 (d) of the Bihar Control of Crimes Act, 1981 which runs as under:-

“2(d) “Anti-Social element” means a person who—

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or

(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or

(v) who was been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.”

11. As per the above definition a person could be an anti-social element, if he either by him or by running a gang of criminals as its leader, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or XVII of the Indian Penal Code.

12. We have already noted from the impugned order itself that in order to branding the petitioner as an anti-social



element the District Magistrate, Lakhisarai had catalogued as many as 30 criminals cases registered allegedly against the petitioner in different police stations. At the same time it was noted in the detention order that out of 27 of those cases, the petitioner had been acquitted in 18 of such cases. It was a circumstance which was lessening the propensity of the criminal activity of the petitioner and it was a circumstance which was to be considered by the detaining authority. However, what we find is that in spite of the orders of acquittal which was passed in favour of the petitioner, the District Magistrate, Lakhisarai was using those cases also as instances of antecedents of the petitioner so as to further draw his satisfaction about the petitioner being an anti-social element. Habitually committing an offence may not have been defined by the Bihar Control of Crimes Act or even by the Cr.P.C., but it necessary denotes that the person who is alleged to be an habitual offender must be indulging in criminal activities of such class which has necessarily impact on public order and the interval of commission of those criminal acts must be very quick and successive. If the petitioner had been acquitted in as many as 18 cases as per the impugned order itself, then it has to be assumed that he had never indulged in those cases. At this stage, the learned counsel appearing on behalf of the State drew our



attention to a letter annexed with the counter affidavit of the District Magistrate, Lakhisarai which is Annexure-A to the counter affidavit. It is a letter dated 10.09.2014 signed on 15.09.2014 by the Public Prosecutor, Lakhisarai through which the Public Prosecutor had informed the Superintendent of Police, Lakhisarai that the petitioner had been acquitted in most of the cases only because of lack of evidence. In a petition of the present nature, this Court is not going into the question of the vice of judgment of acquittal which had been passed in favour of the petitioner. The very letter itself is an evidence that the petitioner was acquitted on account of charges having not been supported by the witnesses and thus, not being established. If the petitioner, not on account of the order of acquittal, had participated in commission of those offences relating to 18 substantive criminal cases, then it again creates a serious impediment in upholding the order of detention as the petitioner's criminal activity could not be said to be as of habit as is required to be established under law.

13. Considering the vague grounds for passing the order or the non-existent grounds for passing the detention order we, find the detention order not sustainable as was held also by the Apex Court in the case of *Ramesh* (supra).

14. On the reasons which we have just assigned after

considering the facts and circumstances of the case, we are of the view that the petition being meritorious has to be allowed. It is, accordingly, allowed. The detention order contained in Annexures-1,2 and 3 are hereby quashed. Let the petitioner be released from custody, if not wanted in any other case.

(Dharnidhar Jha, J)

Brajesh.Kr./-Abhay.

(Amaresh Kumar Lal, J)

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