

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.784 of 2015

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

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Pintu Yadav @ Ashish Kumar, son of Shivajee Singh, resident of village- Balua Tola, P.S. Piro, District-Bhojpur at Ara (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Bihar, Patna
2. The Inspector General of Prison, Bihar, Patna
3. The Under Secretary, Home Department, Bihar, Patna
4. The District Magistrate, Bhojpur at Ara
5. The Superintendent of Police, Bhojpur at Ara
6. The Deputy Superintendent of Police, Bhojpur at Ara
7. The Officer-in-charge/Station House Officer of Piro Police Station, Bhojpur at Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the State : Mr. Vikas Kumar, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 05-08-2015

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

The petitioner seeks quashing of the order dated
3.2.2015 passed in BCCA Case No. 02/2015 by the District
Magistrate, Bhojpur at Ara and further for setting aside of the order
dated 18.03.2015 passed by the State Government affirming the
order of detention of the petitioner and directing that he be kept in
preventive detention till 2.2.2016.



The short facts of the case are that on the basis of the facts and grounds mentioned in the order dated 3.2.2015, the District Magistrate, Bhojpur at Ara held that it was essential to issue detention order against the petitioner preventing him from acting in any manner which is prejudicial for the maintenance of public order and security of life and property of law abiding people of the area. In the said order three recent crimes in which the petitioner was an accused were set out. The nature of the crime committed included stopping and looting of a bus and injuring the Khalasi and gunning down the bus conductor, killing of a Director of a tuition centre and looting and attempting to commit murder. All the three recent cases are of 2014. Eight other cases in which the petitioner was involved starting from the year 2008 onwards are also mentioned showing his propensity to commit crimes. On the basis of the same the District Magistrate drew the conclusion that the petitioner is a notorious and professional criminal and a leader of organized gang; he is a habitual offender and committed serious heinous crimes such as loot, dacoity and murder, etc. and even from the Ara Jail he has been involved in operating heinous crimes and thus if he is released on bail he will create a reign of terror and fear by his criminal activities which will adversely affect public peace, tranquility, public order and communal harmony. On

the basis of the same the order of detention was passed.

It is not disputed by learned counsel for the petitioner that all the necessary requisites with regard to a preventive detention order have been complied in the case of the petitioner and the petitioner was also given an opportunity to file his representation which was duly considered by the State Government. The matter had also come before the Advisory Board which had approved the action taken.

The sole issue raised by learned counsel for the petitioner is based upon a decision of the Supreme Court in the case of Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Ors.: (1996) 6 SCC 593. It is submitted by learned counsel for the petitioner that the preventive detention cannot be made merely on the narration of facts rather the grounds must include all the basic facts on which conclusions of facts were founded. Learned counsel relies upon various paragraphs of the aforesaid judgment. Paragraphs 12 and 13 of the said decision are in the following terms.

“12. The above will show that when a person is detained in pursuance of an order made for preventive detention, he has to be provided the grounds on which the order was made. He has also to be afforded the earliest opportunity of making a representation against that order. Both the requirements have to be complied with by the



authorities making the order of detention. These are the rights guaranteed to the person detained by this clause of Article 22 and if any of the rights is violated, in the sense that earlier the grounds are not communicated or opportunity of making a representation is not afforded at the earliest, the detention order would become bad. The use of the words “as soon as may be” indicate a positive action on the part of the detaining authority in supplying the grounds of detention. There should not be any delay in supplying the grounds on which the order of detention was based to the detenu. The use of the words “earliest opportunity” also carry the same philosophy that there should not be any delay in affording an adequate opportunity to the detenu of making a representation against the order of detention. The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation against the order of detention. A representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detenu and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained, in his own language.



13. The word “grounds” used in clause (5) of Article 22 means not only the narration or conclusions of facts, but also all materials on which those facts or conclusions which constitute “grounds” are based. In *Prakash Chandra Mehta V. Commr. & Secy., Govt. of Kerala*: 1985 Supp. SCC 144 in which an order of detention was passed under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, this Court, while examining the concept of “grounds” used in Article 22(5), observed that the word “grounds” has to receive an interpretation which would keep it meaningfully in tune with the contemporary notions. It was explained that the expression “grounds” includes not only conclusions of facts but also all the “basic facts” on which those conclusions were founded. The “basic facts” are different from subsidiary facts or further particulars.”

Learned counsel for the State, on the other hand, submits that in the present matter there has been no non-compliance of the requirements of a valid order of preventive detention and the grounds are duly supported by the facts on which they are based.

We have considered the submissions of learned counsels for the parties and the materials on the record. The reliance by learned counsel for the petitioner on the case of *Sophia Gulam Mohd. Bham* (supra) appears to be misconceived. It was held by the

Apex Court in the said case that the grounds includes not only conclusions of facts but also all the “basic facts” on which those conclusions were founded. This, it was held, was necessary for the detenu to make an effective representation against the order of detention.

The order dated 3.2.2015 of the District Magistrate, Bhojpur, Ara not only clearly specifies the grounds of detention but further states the facts on the basis of which the said conclusion has been arrived at. In an order of detention nothing more can be required than what has been done by the District Magistrate, Bhojpur, Ara in the present matter.

The submission of learned counsel for the petitioner that the petitioner has been enlarged on bail in all the aforesaid matters can be of no assistance as the grant of bail is upon entirely different considerations. The principle normally followed is that bail is the rule and jail the exception. In an order for preventive detention the same does not apply. When it is found that a person is a notorious criminal who is not only involved in heinous crimes like dacoity and murder but also found to be a leader of an organized gang and acting in a manner so as to create a reign of terror and fear in the locality by his criminal activities, the same will clearly affect the public order, peace, tranquility and communal harmony of the

society, which can be considered good ground for passing detention order.

Thus, in the light of the aforesaid discussions, this Court does not find any merit in the writ application. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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