

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1056 of 2014

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Sanjeev Kumar @ Pappu Sipahi @ Sanjeev Kumar Singh, Son of Late Sawaliya
Kunwar, Resident of Village Hariharpur, P.S. Baniyapur, District Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home (Police), Bihar, Patna.
3. The District Magistrate, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. The Additional Superintendent of Police, Saran at Chapra.
6. The Jail Superintendent, Saran at Chapra.

.... Respondents

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Appearance :

For the Petitioner : Sri Bindhyachal Singh, Advocate
Sri Satya Prakash, Advocate

For the State : Sri Vikash Kumar, A.C. to A.G.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

C.A.V. JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date:20-01-2015

We had heard this petition in full on 26.11.2014
and had also communicated our order of allowing the petition
reserving the reasons to be expressed by us on that day.

2. We subsequently found out that we were misled
in allowing the petition in the light of the judgment of the Supreme
Court in Cherukuri Mani Vs. The Chief Secretary, Government of
Andhra Pradesh & Ors. reported in 2014 (3) PLJR 280 which Sri
Bindhyachal Singh, the learned counsel appearing on behalf of the
petitioner had placed before us, which had interpreted Section 3 of
the Andhra Pradesh Prevention of Dangerous Activities of



Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 ('the Andhra Act' in short) which appears quite in pari materia with Section 12 of the Bihar Control of Crimes Act, 1981 ('the Bihar Act' in short) except that in the Andhra Act the word 'Police Commissioner' also appears in Section 3. While We were hearing another petition the next day, Sri Vikash Kumar, the learned counsel appearing on behalf of the State brought into our notice 1985 PLJR 763 (Bhim Singh Vs. The State of Bihar) which had elaborated upon the scope and ambit of Section 12 of the Bihar Act and had thereupon held that section 12 was containing a provision of delegation of its power by the State Government of passing the preventive detention order against a person to the District Magistrate of a particular district and that order was to survive only for three months if the same was not extended for further periods not exceeding three months by the State Government on being satisfied about the necessity of extending the same. Thus, what appeared was that the Division Bench of this Court was laying down the correct law and that was not placed before us by the counsel appearing for the petitioner which led us to pass an absolutely erroneous order. We after coming across the fallacy we had fallen into, record our order dated 10.12.2014 which runs as follows:-

"Heard.

We have to get the present petition listed in spite of having communicated the result on the petition on 26.11.2014 on account of the fact that a Division Bench decision of this Court reported in 1985 PLJR 763 was not brought into our notice by Sri Bindhyachal Singh, Advocate who had argued on the merit of petition, which in fact came to our notice while we were hearing another petition bearing Cr.W.J.C. No. 1066 of 2014. This law was brought into our notice by Sri Vikash Kumar, Advocate. We thought it proper that we rehear the matter in full in view of the case reported in 1985 PLJR 763 and decide it finally as we are of the opinion that the result given by us on 26.11.2014 was not based on correct interpretation of Section 12 of the Bihar Control of Crimes Act and it flowed from withholding from us the earlier decision of this Court on the provision noted above which is relevant for appropriate decision of the present petition.

List it for Admission-II tomorrow, i.e., on 11.12.2014."

3. As may appear we again directed the listing of the present petition for Admission-II on 11.12.2014.

4. Sri Bindhyachal Singh, the learned counsel appearing on behalf of the petitioner who had not placed 1985 PLJR 763 (Bhim Singh Vs. The State of Bihar) was attempting to convince us that the petition was still fully covered by the Supreme Court decision in Cherukuri Mani (supra), but we found the contention not acceptable inasmuch as the Division Bench of the Court in Bhim Singh (supra) was laying down the correct law by appropriately considering the provisions of Section 12 of the Bihar



Act and, as such, we were bound by that decision of the Court to follow it if we were not going to take a view different from that taken by the Court in Bhim Singh (supra). Sometimes a counsel from whom the expectations, both of the Bench and Bar, are very high also indulge in concealing the appropriate law or fact for placing a wrong and untenable proposition so as to obtaining an erroneous order. It hurts the system of justicing more than the judges who fall prey to such concealments of law and facts. It appears a case of that category and worries us.

5. At any rate, the petitioner Sanjeev Kumar @ Pappu Sipahi @ Sanjeev Kumar Singh was directed to be detained by the District Magistrate, Saran at Chapra by his order passed on the 19th of September, 2014 on the basis of a report submitted by the Superintendent of Police, Saran at Chapra which stated that the petitioner was a hardened criminal who had professed to committing crime after crime of such nature as of loot, dacoity, murder and such other serious offences by forming a gang of criminals in order to accomplishing into his calling. For example, he had committed bank dacoity in the Punjab National Bank, village Hansrajpur Branch and had looted an amount of Rs. 1.25 crore from the bank for which Baniyapur P.S. Case No. 75 of 2013 under Sections 395 and 397 of the Indian Penal Code had been



drawn up. Besides the above offence, the present petitioner was running a racket of selling illicit liquor and was extorting money by that activity also for which Baniyapur P.S. Case No. 60 of 2014 under Sections 272, 273 and 384 of the Indian Penal Code as also Section 47A of the Excise Act was instituted. The last instance of the recent activity of the petitioner regarding the commission of crime one after the other was Baniyapur P.S. Case No. 67 of 2014 under Sections 302/120B of the Indian Penal Code. It was stated that Roushan Kumar, one of the neighbours of the petitioner who was proving to be a stumbling block to the political aspirations of the present petitioner, a habitual criminal was killed under conspiracy hatched by the petitioner and other members of his gang while the petitioner was lodged in jail for which Baniyapur P.S. Case No. 67 of 2014 was drawn up. The Superintendent of Police, Saran at Chapra also made it to appear to the District Magistrate, Saran that the petitioner was attempting to obtain an order of bail to get out of jail and if he succeeded in coming out of the jail then his very being at large, shall be detrimental to the public order as he may indulge in commission of offences, destabilizing the peace and public order in the society. For the satisfaction of the District Magistrate, Saran, as many as 14 cases of various natures, like, that under Sections 392, 395, 396, 397,



412, 302 etc. were cited as the antecedent of the petitioner which appear very much noted in the very impugned order passed on 19.09.2014 by the District Magistrate, Saran at Chapra who was satisfied on the report made by the Superintendent of Police and directed that the petitioner be detained by his order issued in this behalf on 19.09.2014.

6. It appears that the petitioner was granted the liberty of representing to the State of Bihar and the initial order of detention passed by the District Magistrate in exercise of his powers under Section 12(1) of the Bihar Act was placed for approval as per the provision before the Government of Bihar and the Government of Bihar vide its order dated 29.09.2014 approved the order. The petitioner represented to the State of Bihar against his detention which was ordered initially by the District Magistrate, Saran and that was also rejected by order dated 20.10.2014 and finally after obtaining the opinion of the Advisory Board, the Government of Bihar directed the detention of the petitioner for one year from 19.09.2014 to 18.09.2015.

7. Sri Singh, the learned counsel appearing on behalf of the petitioner attempted again to impress upon the Court that the decision of the Supreme Court in Cherukuri Mani (supra) was rightly explaining the ambit of Section 3 of the Andhra Act



which was quite in pari materia with Section 12 of the Bihar Act and this Court should not revise its order. But when this Court confronted him with the Division Bench decision of the Court reported in Bhim Singh (supra) then Sri Singh agreed that the Court has to proceed in the matter only in the light of the judgment of this Court in Bhim Singh (supra) and Cherukuri Mani (supra) might not have laid down the right law. Thus, it is settled as per Bhim Singh (supra) that the District Magistrate of any district enjoys a power delegated to him by the Government of Bihar to pass an order of detention after being satisfied that any person may act in a manner which may be prejudicial to the maintenance of public order and on reasons shown to him may direct his detention. The order of delegation made by the State Government for passing such orders by the District Magistrate could be only for a period not exceeding three months and that period may also be extended further for a period of not exceeding three months if there are satisfactory reasons necessitating the extension to be made. Thus, the provisions of Section 12 of the Bihar Act has nothing to do as regards the total period of detention and it has only to be reckoned as per the provisions of Section 22 of the said Act which envisages that a person may be detained for a total period of one year if all criteria in the above behalf is fulfilled. What appears from present



discussion is that the detention of the present petitioner from 19.09.2014 to 18.09.2015 for a period of 12 months cannot be said to be in infraction of the provisions of Section 12 of the Bihar Act. In fact Section 12 has nothing to do with the period of detention and it only speaks of the period for which a District Magistrate could enjoy the powers which has primarily to be exercised by the Government of Bihar and that initially could be only for three months unless, as noted above, the same is extended on reasons being shown and the necessity existing in that behalf, for a further period of three months.

8. The next contention of Sri Singh was that the power was delegated to the District Magistrate, Saran at Chapra by S.O. No. 345, dated the 26th June, 2014 published in Bihar Gazette Extraordinary, dated the 26th June, 2014. On perusal of the above noted order, it may be found that the power was vested into all the District Magistrates of the State of Bihar to exercise powers under Section 3(3) of the National Security Act, 1980 and, as such, the District Magistrate, Saran was not competent enough to pass the detention order. It was contended that the District Magistrate, Saran lacked power to act under Section 12(2) of the Bihar Act and, as such, the order was non est. By our order dated 11.12.2014, we directed the State to reply to the above contention



and accordingly, the learned counsel for the State filed a supplementary counter affidavit on 19.12.2014 enclosing therewith the copy of the notification issued by the Government of Bihar on 17.06.2014 under Section 12(1) of the Bihar Act vesting powers in all the District Magistrates of the State to exercise powers under Section 12(2) of the Bihar Act from 01.07.2014 for a further period of three months, i.e., from 01.07.2014 to 30.09.2014. It was contended by the learned counsel appearing for the State that the impugned order passed by the District Magistrate on 19.09.2014, very much within the period for which District Magistrate, Saran was competent to act under Section 12(2) of the Bihar Act and, as such, the order could not be said to have been passed in inherent lack of jurisdiction. We have perused the notification issued by the Government of Bihar placed on record of the present petition which is dated 17.06.2014 and we find that the power which was delegated to all the District Magistrates by the Government of Bihar to act under Section 12(2) of the Bihar Act was extended for a further period not exceeding three months for the period from 01.07.2014 to 30.09.2014. The order of detention, as we have already noted, was dated 19.09.2014 and, as such, it was passed very much within the period for which the District Magistrate, Saran had been delegated to exercise the power of detention under

the Bihar Act.

9. The other contention on behalf of Sri Singh was that the detention order indicated the non application of his mind by the District Magistrate to the facts submitted to him. In the above connection, Sri Singh was placing before us the Supreme Court decision in Anant Sakham Raut Vs. State of Maharashtra reported in AIR 1987 SC 137, Pramod Jaiswal @ Pramod Sah Vs. The State of Bihar & Ors. reported in 2008 (4) PLJR 286, Raj Kumar Mahto @ Langra Vs. The State of Bihar & Ors. reported in 1994 (2) PLJR 82 and Satyendra Sinha @ Chhotu Vs. The State of Bihar & Ors. reported in 2006 (3) PLJR 359. In the above decisions the fact situations were similar. The detainees in those cases had been released on bail in some of the cases but were still in custody in one of the cases which had been used as the ground for detaining each of them. As may appear from Raj Kumar Mahto @ Langra (supra) 1994 (2) PLJR 82, in one of the cases which was used for drawing satisfaction to order the detention, the detainee had been acquitted as well. Those facts were never mentioned in the detention order and it was held in the above cases that the non- mentioning of the above facts was vitiating the detention order. Moreover, it was also held by the Division Bench of this Court in Pramod Jaiswal @ Pramod Sah (supra) that for



passing the detention order on the ground of, 'if released from jail custody, he will disturb the tranquility of the locality,' it was necessary for the detaining authority to establish that the detenu stands apart from ordinary criminals by subjective analysis of facts relevant to the detenu. While going through the impugned order passed by the District Magistrate, Saran at Chapra by which he ordered the petitioner to be detained, we find it stated, as may appear from the detention order, that the petitioner had been admitted to bail in most of the cases and he was still in custody in one of the cases and was attempting to come out of jail. Thus, what we find is that the above decisions cited by Sri Singh in support of his contention that the impugned orders suffered from the vice of non-application of mind is not applicable as the District Magistrate has very well mentioned that the petitioner had been released from custody in some of the cases and was still in custody and was attempting to get out of prison and if he succeeded in getting an order of bail, his very release shall be detrimental to the public order. In none of the three cases, which have been used as grounds for passing the detention order against the petitioner, i.e., Baniyapur P.S. Case No. 75 of 2013, Baniyapur P.S. Case No. 60 of 2014 and Baniyapur P.S. Case No. 67 of 2014, the petitioner has not been put on trial and he was still in custody in Baniyapur P.S.



Case No. 75 of 2013 under Sections 395 and 397 of the Indian Penal Code when he is said to have conspired with his gang men to cause the commission of murder of his political foe, namely, Roushan Kumar. The order itself indicates that these facts were duly considered by the District Magistrate, Saran for passing the detention order against the petitioner.

10. The other submission of Sri Singh in the above connection was that no reason has been assigned to draw the satisfaction upon the facts submitted by the Superintendent of Police, Saran to the District Magistrate, Saran. We have already noticed as to what were the material facts that were considered by the District Magistrate, Saran at Chapra to note that the petitioner appeared to be an anti social element and a habitual offender, who was attempting to get released from jail by obtaining an order of bail, and further that his prospective release shall be detrimental to the very public order. The facts concerning each offence committed by the petitioner and its impact on public order has been discussed in sufficient detail upon which the reason has been assigned to draw the subjective satisfaction. The submission, thus, appears baseless.

11. Sri Singh was submitting that there was no continuity in commission of offences by the petitioner and, as



such, the petitioner could not be said to be an anti social element or a habitual offender. Sri Singh was pointing out that the petitioner was in custody since 04.04.2013 after being implicated in Baniyapur P.S. Case No. 75 of 2013 dated 03.04.2013 and the other case, i.e., Baniyapur P.S. Case No. 60 of 2014 had preceded the above Baniyapur P.S. Case No. 75 of 2013. It was contended that the petitioner, while still in custody, was made an accused in Baniyapur P.S. Case No. 67 of 2014 dated 06.04.2014 under Sections 302/120B of the Indian Penal Code. On perusal of the chronology of dates in respect of the three cases, which were used as grounds in order to drawing satisfaction by the District Magistrate we find that the offences for which the three cases were registered were committed by the petitioner one after the other at quick succession. It was within a month of Baniyapur P.S. Case No. 60 of 2014 that Baniyapur P.S. Case No. 75 of 2013 relating to the dacoity committed in the Punjab National Bank was committed and when the petitioner was in custody, he engineered the killing of his political foe, who was also his neighbour through his gang men. The facts relating to the dacoity and cause injuries to the persons present in the Bank during that course could be such an act which could be detrimental and threatening to the public order. Public order connotes even tempo of life of the community, taking



state as a whole or as a specified locality or a locality being treated as such. The acts which could come disturbance to public order has always to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community which determines whether the disturbance amounts only to a breach of law and order (please see Arun Ghosh Vs. State of West Bengal reported in AIR 1970 (1) SCC 98). The acts of committing dacoity and injuring persons inside the Bank during that course, could never be an individual act the impact of which could never be localized. It has a general and serious effect on the smooth and tranquil flow of life in the society. Likewise, killing a political foe and a neighbour by engineering the commission of the offence of murder from jail, may at the first blush appear an individual act of crime against a particular individual, but the impact which the act must have on the general tranquility and smooth flow of life in the society could be that people will be falling in silence and shock and thus, that act also could be a threat to public order. Thus, what we find is that the grounds which were the basis for drawing satisfaction by the District Magistrate for passing the detention order were quite detrimental to the public order and there was quite

proximity of time in commission of those three offences. They were committed at quick succession and almost within a month of the three acts of crime. It in itself, indicates the anti social behaviour of the petitioner besides indicating that the petitioner was a habitual offender.

12. The last submission of Sri Singh was that there was delay in disposal of representation. We find that the petitioner filed representation on 23.09.2014 and again filed his supplementary representation on 04.10.2014 and the same was transmitted by the Superintendent of Jail on 10.10.2014 which was rejected on 20.10.2014. In the counter affidavit the State has pointed out that the representation was not received in the office of the Government and when it was received it was quickly processed as appears from paragraph-10 of the counter affidavit filed by respondent nos. 1 and 2, sworn by Suman Kumar Sinha, the Under Secretary Home (Police) Department, Government of Bihar. It has been stated that no representation or supplementary representation of the petitioner was ever received in the department rather a photo copy of the representation along with the comment of the District Magistrate, Saran at Chapra in the department on 10.10.2014 and 11 and 12 were holidays on account of being Saturday and Sunday and the section of the department made noting up to the level of



the Additional Secretary on 13.10.2014 itself. The Principal Secretary of the Home (Police) Department, Government of Bihar placed the same on 14.10.2014 before the Chief Minister of the State who was holding the charge of the Home (Police) Department on 17.10.2014 and the same was rejected on 17.10.2014. The rejection order was communicated on 20.10.2014. We find that the representation was quickly processed by the Government and was rejected. We do not find that there was any delay in disposal of the representation of the petitioner.

13. Thus, having considered the facts of the case and the submissions of the parties in the light of the relevant materials placed on record, we find that the petition lacks merit and the same is dismissed.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/A.F.R.

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