

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1051 of 2015

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

1. Chulbul Singh @ Bikul Kumar Singh @ Vipul Kumar Son of Sri Kripa Narayan Singh Resident of village - Berhna Bujurg, Police Station Barh, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrare, Patna
2. The Senior Superintendent of Police, Patna
3. The Superintendent of Police, Patna
4. The Deputy Superintendent of Police, Barh, District - Patna
5. The Officer - in - Charge, Barh Police Station, District Patna
6. The Officer - in - Charge, Sigori Police Station, District Patna

.... Respondent/s

Appearance :

For the Petitioner/s : M/S Ajay Kumar Thakur & Manish Kr. No.2

For the Respondent/s : Mr. Sanjay Kumar, A.C to G.A. 5

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-10-2015

A counter-affidavit has been filed on behalf of the State,
sworn by the Senior Deputy Collector, Legal Cell, Patna.

2. We would like to observe that in the matter of preventive detention where orders are issued by the statutory authority, the counter-affidavit has to be sworn and filed by the statutory authority itself. That cannot be delegated to any other Officer of the State, because it is a matter of satisfaction of the authority issuing the preventive detention or an order under preventive detention law. The State must keep this in mind.

3. We have heard learned counsel for the petitioner and learned counsel for the State and perused the records.

4. By this writ petition, the petitioner challenges the order passed under section 3 of the Bihar Control of Crimes Act, 1981. This Act provides for taking appropriate action in relation to “habitual offender”, as statutorily described and prescribed under the Act. It predicates a person who is an accused or convicted in more than one cases involving cognizable offences. In the counter-affidavit it is not disputed that in the show cause there was no mention of any case registered with the police, involving the petitioner in any cognizable offence. There was reference to only two informatory petitions, which were lying with the police which were not even registered as formal F.I.R. in relation to any cognizable offence. These informatory petitions(Sanhas) cannot be the present acts of a cognizable offence. It is then stated in the counter-affidavit that it appears that the petitioner is an accused in Barh P.S. Case No. 253 of 2015 instituted on 25-6-2015 under various sections of the Indian Penal Code, though even this case is not mentioned in the show cause notice, which is notice of assumption of jurisdiction. This could only be solitary case against the petitioner, and that would not make him habitual offender, as contemplated under the Act. In absence of this condition precedent *since qua non*, no action could be taken under the Act against the

petitioner.

5. Therefore, we have no option but to allow the writ petition and quash the order passed by the District Magistrate, Patna, in relation to the petitioner dated 29-9-2015, as communicated under Memo No.-1-70/15-3604 dated 30-9-2015, as contained in Annexure-5 to the writ petition.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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