

sIN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.34 of 2016

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

Roshan Kumar Thakur @ Roshan Thakur, S/o Late Sitaram Thakur,
resident of Village- Sundarpur, Sonarpatti, P.S. L.N.M.U., District-
Darbhanga. Petitioner.

Versus

1. The State of Bihar through The Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Government of Bihar, Patna
3. The Under Secretary, Home (Police) Department, Government of Bihar, Patna
4. The District Magistrate, Darbhanga.
5. The Senior Superintendent of Police, Darbhanga, Patna.
6. The Jail Superintendent, Darbhanga. Respondents.

WITH

Criminal Writ Jurisdiction Case No. 36 of 2016

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

Dablu Tanti, son of Late Bhuna Tanti, Resident of village- Pustaiya,
P.S. Laxmipur, District- Jamui. Petitioner.

Versus

1. The State of Bihar.
 2. The Principal Secretary, Home (Police), Department, Bihar, Patna.
 3. The Director General of Police, Bihar, Patna.
 4. The District Magistrate, Jamui.
 5. The Superintendent of Police, Jamui.
 6. The Sub-Divisional Police Officer, Jamui.
 7. The Inspector General of Police, Munger Range, Munger.
- Respondents.

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Appearance :

(In Cr. WJC No. 34 of 2016)

For the Petitioner : Mr. Dharmendra Jha, Adv.

For the Respondents : Md. Raisul Haque, SC-4.

Md. Obaidullah, AC to SC-4.

(In Cr. WJC No. 36 of 2016)

For the Petitioner : Mr. Satya Prakash Parasar, Adv.

For the Respondent s : Mr. Prabhu Narayan Sharma, AC to AG.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-01-2016

Both these criminal writ applications under Article-226 of the Constitution challenge the order of preventive detention issued by the district authorities and, as approved by the State Government, as made under Bihar Control of Crimes Act, 1981 (hereinafter in short referred to as the 'Bihar Act'). The Common question of law, raised in both the writ applications, being that the State Government had no power to approve preventive detention straightaway for the maximum period of 12 months. It could pass order of preventive detention only for a period of three months, at the first instance, extendable for a period of three months at a time.

2. It is thus submitted that in the present case, the State Government, while approving the order of detention passed by the district authorities, approved the same



straightaway for a period of one year (12 months), the order of the State Government rendered the detention invalid, in view of the judgment of the Apex Court in the case of **Cherukuri Mani Vs. The Chief Secretary, Government of Andhra Pradesh and others** since reported in **AIR 2014 Supreme Court 2090 = 2014 (3) PLJR 280**. In the first writ application (Cr.W.J.C. No.34 of 2016) an additional ground is taken that there has been inordinate delay in considering the representation of the detenu rendering the detention bad.

3. In fairness to learned counsel appearing for the writ petitioners, it must be noted that they fairly concede that in view of number of criminal cases in which the petitioners are involved and their serious nature, including a life conviction in the first case, they do not contest that they would be “antisocial elements” within the meaning of Section-2 (d) of the Bihar Act. However, on the strength of proviso to Section-12 (2) thereof and the recent authority of the Apex Court in the case of **Cherukuri Mani (supra)**, they contend that the State Government was incompetent to pass an order affirming the preventive detention for a period of one year (12 months) at the first instance itself. It is the legality and correctness of these submissions that is to be decided by us.

4. In fairness to learned counsel for the petitioners, we must note that the Apex Court in the recent decision of **Cherukuri Mani (supra)** with reference to proviso to Section-3 (2) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter in short referred to as 'Andhra Pradesh Act') held that the State Government was incompetent to order detention for a period exceeding three months at the first instance. It may also be noted, as we would seen, that the provisions of Section-3 (2) of the Andhra Pradesh Act including its proviso are in *pari materia* to Section-12 (2) of the Bihar Act.

5. Mr. Vikash Kumar, learned counsel appearing for the State, has brought to our notice first a judgment of the Apex Court in the case of **Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another** since reported in **AIR 1992 Supreme Court 979** and then a Division Bench of this Court in the case of **Bhim Singh Vs. State of Bihar** since reported in **1985 PLJR 763 = 1985 BLJ 723** and submitted that *pari materia* provisions of Section-3 (2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981

(hereinafter in short referred to as ‘Maharashtra Act’) were considered and identical argument on behalf of detenu, upon consideration of the statutory provision, was rejected, which decision was not brought to the notice of the Apex Court in the recent judgment in the case of **Cherukuri Mani (supra)**. It was submitted that this Court considered the provisions of Section-12 (2) of the Bihar Act and same argument and rejected the same.

6. In order to resolve the nature of dispute created, it would first be necessary to quote and compare the provisions of Section-3 (2) of the Maharashtra Act, Section-12 (2) of the Bihar Act and Section-3 (2) of the Andhra Pradesh Act, which are in *pari materia*:-

Maharashtra Act	Bihar Act	Andhra Pradesh Act
3 (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing , direct, that during such period as may be specified in the	12 (2) : If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District	3 (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the

order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section **shall not, in the first instance, exceed three months**, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period **not exceeding three months at any one time**.

Magistrate may also, if satisfied as provided in sub-section (1) exercise the power conferred upon by the said sub-section:

Provided that the period specified in an order made by the State Government under this sub-section **shall not, in the first instance exceed three months**, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period **not exceeding three months at any one time**.

order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section **shall not in the first instance, exceed three months**, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period **not exceeding three months at any one time**.

(emphasis supplied)

7. The first thing that is to be noticed is that the substantive part of the sub-sections under consideration clearly deals with delegation of power, of passing an order of detention, which otherwise lies with the State Government, to the District Magistrate by an order in writing. The proviso thereto would thus on plain reading refer to the order of delegation to the district authorities and limiting its period.

Thus, the period of delegation, at the first instance, can be of only three months extendable from time to time for the period of three months at a time. It is on the plain reading of the text it reveals no relation to the period of detention at all. The maximum period of detention is dealt with in other provisions of the respective Act, and, so far as the Bihar Act is concerned it is Section-22 thereof, which reads as follows:-

“22. Maximum period of detention:- The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under Section 21 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the Government to revoke or modify the detention order at any earlier time.”

8. Before proceeding further in the matter, we may note one contention, as raised by the petitioners, only to be rejected, that in terms of Article-22 (7) of the Constitution, State could not provide for a law in relation to preventive detention for a period exceeding three months and, it was only the Parliament that can do so and, Parliament alone can make a



law in this regard. In our view, this issue was raised in the case of **The State of West Bengal Vs. Ashok Dey** since reported in **AIR 1972 Supreme Court 1660** and the Constitution Bench rejected the same by majority. The Constitution Bench clearly held that it was within the legislative competence of the State by virtue of Entry-3 List-III of the 7th Schedule to the Constitution, State could validly enact preventive detention laws and, while doing so, could provide for a period of detention beyond period of three months, subject to approval of the detention by the Advisory Board within three months. Thus, there is no gainsaying that Section-22 of the Bihar Act providing for a period of detention of one year (12 months) was beyond the legislative competence of the State and in conflict with Article-22 (7) of the Constitution.

9. Now, we may consider the case of **Mrs. Harpreet Kaur Harvinder Singh Bedi (supra)**. The case arose out of Maharashtra Act. The relevant provisions of which have been quoted above. In paragraph-5 their Lordships have noted the relevant argument being the second argument in the case, which is reproduced herein below:-

“The second argument of the learned counsel is based on the proviso to S. 3(2) of the Act, which according to the

learned counsel, prohibited the State Government to make an order or detention, in the first instance, exceeding three months and since the order of detention in the instant case was for a period exceeding three months, it was categorised as bad in law and invalid. No other contention was pressed.”

10. Their conclusion is to be found in paragraph-22 of the reports and the relevant part thereof is quoted hereunder:-

“22. A plain reading of the Section shows that the State Government under Section 3 (1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of “public order”, it is necessary so to do, make an order of detention against the person concerned. **Sub-section (2) of Section 3 deals with the delegation of powers by the State Government** and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may



be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-section (1). **The proviso to sub-section (2), only lays down that the period of delegation of powers,** specified in the order to be made by the State Government under sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) **shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu.** The maximum period of detention is prescribed under Section-13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. **It is, therefore, futile to contend that the order of detention in**

the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails.” (emphasis supplied)

11. Thus seen, in this decision of **Mrs. Harpreet Kaur Harvinder Singh Bedi (supra)**, the Apex Court clearly held in 1992 itself, upon interpretation of the *pari materia* provisions, that the said provisions dealt with the limitation on the delegating power of the State delegating authorities to the district authorities and did not deal with the period of detention at all. It may be noted that this is exactly what earlier in 1985 the Division Bench of this Court in the case of **Bhim Singh (supra)**, while interpreting Section-12 (2) of the Bihar Act, has held.

12. Now, we may advert to the recent decision of the Apex Court in the case of **Cherukuri Mani (supra)**, which was dealing with the *pari materia* provisions of the Andhra Pradesh Act. In paragraph-11 of the reports their Lordships have noticed the provisions of Section-3 (2) of the Andhra Pradesh Act and in paragraph-12 and in paragraph-13 thereof, their Lordships have held thus:-

“.....It means that, if the Government intends to detain an individual under the



Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression “extend such period from time to time by any period not exceeding three months at any one time” assumes significance in this regard.”

13. In paragraph-14, their Lordships then referred to Clause (4) (a) of Article-22 of the Constitution of India thereof and, ultimately, held that passing of detention order for a period of 12 months straightaway, without review, is deterrent to the rights of detenu. Hence, the impugned Government order, directing detention for the maximum period of 12 months, straightaway cannot be sustained in law (paragraph-16).

14. Thus seen, there are two interpretations of the Apex Court in relation to *pari materia* provisions. First, in 1992 by a Division Bench of two Hon’ble Judges in respect of the Maharashtra Act and then in 2014, again by a Division Bench of two Hon’ble Judges in relation to the Andhra Pradesh Act. The later decision, unfortunately, makes no reference to

the earlier decision, which normally would be binding on co-terminus Benches.

15. In our view, we would be bound by the earlier judgment in the case of **Mrs. Harpreet Kaur Harvinder Singh Bedi (supra)** and it would not be advisable for us to follow the later judgment, which has not taken note of the earlier judgment. We may also note that virtually the same problem arose recently before the Andhra Pradesh High Court in a writ petition, arising out of preventive detention under the provisions of the Andhra Pradesh Act, which decision is in the case of **B. Venkata Ramana Vs. The Government of Andhra Pradesh** since reported in **2015 Criminal Law Journal 395** and wherein noticing the conflict, as we have done, the Lordship of the Andhra Pradesh High Court has also chosen to follow the earlier decision of the Apex Court in the case of **Mrs. Harpreet Kaur Harvinder Singh Bedi (supra)**. We agree with the judgment of the Andhra Pradesh High Court in the case of **B. Venkata Ramana (supra)** in this regard.

16. Accordingly, we hold that when the State Government approved the order of detention, as passed by the District Magistrate and ordered for preventive detention of the petitioners, in both the cases, for one year, no illegality or

unconstitutionality was committed and the preventive detention cannot be validly challenged on that ground alone.

17. We may notice that recently another Division Bench of this Court in the case of **Sanjeev Kumar alias Pappu Sipahi alias Sanjeev Kumar Singh Vs. The State of Bihar and others** since reported in **2015 (2) BBCJ 21 (HC)** was also confronted with the judgment of **Cherukuri Mani (supra)** but, we would not commend the manner in which the Division Bench proceeded in the matter to follow the earlier judgment of this Court in the case of **Bhim Singh (supra)** in preference to the case of **Cherukuri Mani (supra)** virtually holding that the judgment of the Apex Court was erroneous. This Court can never hold any judgment rendered by the Apex Court to be erroneous, as in view of Article-141 of the Constitution, the law laid down by the Apex Court would be the law of the land. The High Court can always, notice a binding precedent, not shown to the later Judges or can notice a conflict of decisions and for good reasons follow a particular decision but it cannot ignore a Supreme Court judgment, in view of an earlier judgment of a High Court on the issue. Such an approach would be destructive of judicial etiquette and decorum.

18. We may now consider the additional

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ground raised in respect of the first writ petition with regard to delay in consideration of representation by the State against detention. It is stated that against the detention order, that was issued by the District Magistrate, Darbhanga on 29.06.2015, the petitioner had filed a representation to the State Government on 10.07.2015, which was rejected on 02.08.2015 and, was communicated to him on 05.08.2015. The Principal Secretary, Department of Home had recommended for rejection of the representation on 23.07.2015 but the matter was placed before the Chief Minister for his approval only on 02.08.2015. Thus, there was an inordinate delay in consideration of his representation against detention, rendering his detention invalid. We must note that when the writ petition was filed on 08.01.2016, this ground was not taken. This ground was urged only when the counter affidavit was filed disclosing the aforesaid facts. Ordinarily, this would be good ground for this Court to allow the writ applications, as the delay of 10 days, in between the recommendation of the Principal Secretary to its approval by the Chief Minister, was fatal but we do not consider it so in the facts of this case. The detention order was passed by the District Magistrate, Darbhanga clearly stating that the petitioner was in judicial custody in relation to various cases and

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was likely to move for bail and, if released, it would be prejudicial to public order, keeping his past criminal activities in mind, which included a life conviction, in which he had been released on bail by the High Court in appeal, pending its final hearing. The detention order passed by the District Magistrate was served on him while he was still in judicial custody and he was ultimately granted bail by this Court on 19.08.2015. Therefore, up to 19.08.2015, he being already in judicial custody, the delay in consideration of his representation did not prejudicially affect his liberty, as long before the order or release on bail, his preventive detention had been already confirmed by the Advisory Board and approved by the Chief Minister. Thus, in our view, this additional ground taken in the first writ application cannot be accepted as a valid ground for challenge of detention.

19. Thus, there being no other ground of challenge, we dismiss both the writ applications as such.

(Navaniti Prasad Singh, J.)

Nilu Agrawal, J.

(Nilu Agrawal, J.)

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