

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.938 of 2015

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Sikandar Sahni, son of late Brahmdeo Sahani, resident of Village- Ram Tola Kothiya, P.S.- Mufassil, District-Khagaria.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Home (Police) Government of Bihar, Patna.
3. The Additional Secretary, Department of Home (Police) Government of Bihar, Patna.
4. The Under Secretary, Department of Home (Police) Government of Bihar, Patna.
5. The District Magistrate, Khagaria.
6. The Superintendent, Khararia Jail, Khagaria.

.... Respondents

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Appearance :

For the Petitioner : Mr. Md.Imteyaz Ahmad, Advocate.

For the Respondents : Mr. R.B.Mahto (A.G)

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

7 11-02-2016 This writ application has been filed for setting aside the order bearing No. 7/CCA-10-35/2015 Home Police 5475 dated 05.08.2015 (Annexure-1), issued under the signature of the Under Secretary, Home(Police) Department, Government of Bihar, Patna, in exercise of power conferred under Section 21(1) and 22 of Bihar Control of Crimes Act, 1981 (hereinafter referred to as 'the Act'), by which the order of detention dated 29.06.2015, in exercise of power conferred under Section 12(2) of the Act, passed

by the District Magistrate, Khagaria, has been confirmed and there has been direction to detain the petitioner till 28.06.2016.

The brief facts leading to this criminal writ are as under:-

On the basis of the report of the Superintendent of Police, Khagaria, vide Letter No. 2564/Conf. dated 19.06.2015, the District Magistrate, Khagaria, in exercise of power conferred under Section 12(2) of the Act, passed the order of detention against the petitioner contained in Memo No. 815/Legal dated 29.06.2015(Annexure-3), mentioning the grounds of detention vide Memo No. 816/Legal dated 29.06.2015 that the petitioner being a veteran criminal and habitual offender, as many as five criminal cases have been registered against him. The grounds for detention referred above further mentions that the petitioner is an anti-social element and he was in judicial custody in connection with Khagaria P.S. Case No. 719/2014 dated 16.11.2014, in which, after investigation the police submitted charge sheet on 09.02.2015 and the petitioner remaining in judicial custody in connection with the said case, had been remanded in another criminal case bearing Khagaria(Chitragupta Nagar) P.S. Case No. 305/2015 dated 14.05.2015 and after investigation the charge sheet had been submitted against the petitioner. The said grounds for detention further shows that the petitioner had been granted



bail in Khagaria P.S. Case No. 719/2014 and he was making attempt to bail in another case i.e., Khagaria P.S. Case No. 305/2015 and there is possibility of grant of bail to the petitioner and there is likelihood of his release, therefore, to prevent him from acting in any manner prejudicial to the maintenance of the public order, the order of preventive detention was passed by the District Magistrate.

After passing of the detention order, copy of the same was served upon the petitioner together with the grounds for detention and the order of detention was made for approval before the State Government, which came to be approved vide order dated 09.07.2015, passed by the Home(Police) Department, Government of Bihar, Patna.

The petitioner made his representation before the Secretary, Home(Police) Department, Bihar, Patna, against the said detention order, which was rejected vide order dated 05.08.2015 (Annexure-5), passed under the signature of the Under Secretary, Home (Police) Department, Government of Bihar, Patna. The matter of detention of the petitioner was referred to the Advisory Board together with the grounds of detention and the representation of the petitioner. The Advisory Board on 22.07.2015 opined that there being sufficient grounds exist for

detention of the petitioner. Thereafter, the State Government confirmed the said detention order dated 29.06.2015 and further directed to detain the petitioner till 28.06.2016 vide order dated 05.08.2015, passed under the signature of the Under Secretary, Home(Police) Department, Government of Bihar, Patna.

Learned counsel for the petitioner submits that the order of detention dated 29.06.2015 is bad in itself on two grounds, firstly, the petitioner is not an anti-social element and by that time when the said detention order came to be passed, there was no likelihood of release of the petitioner from jail, as the bail application of the petitioner in Khagaria P.S. Case No. 719/2014 had been rejected by the learned Sessions Judge in the month of March, 2015, and thereafter no application for bail had ever been filed before this Hon'ble Court up to 29.06.2015 i.e., the date of passing of detention order and the counsel for the petitioner further contends that in the second case i.e., Khagaria P.S. Case No. 305/2015, the petitioner never filed any bail application.

Apart the grounds mentioned above, counsel for the petitioner also contends that the representation of the petitioner was not duly considered by the State Government and it was not mentioned in the detention order dated 29.06.2015 that the petitioner could file representation against the said detention order.



The counter-affidavits have been filed by the Under Secretary, Home (Police) Department, Government of Bihar, as well as the District Magistrate, Khagaria. In the counter affidavits they have only mentioned about the procedures, right from passing of detention order by the District Magistrate, Khagaria, up-to confirmation of the detention order of the State Government. The counter affidavits appear to be completely silent, in respect of ‘matter in issue’ as raised by the petitioner.

Now, the points arise for consideration of this Court are:-
where the detention order dated 29.06.2015(Annexure-3) passed by the District Magistrate, Khagaria, in exercise of power conferred under Section 12(2) was required to be passed and whether the order of confirmation of detention dated 05.08.2015 (Annexure-1) passed under the signature of the Under Secretary, Home (Police) Department, Government of Bihar, Patna, in respect of the petitioner is a valid order ?

We may notice here the relevant provisions of the Act, which reads thus:-

“12. Power to make order detaining certain persons-(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of

anti-social elements cannot be prevented otherwise than by the immediate arrest of such person, make an order directing that such anti-social element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limit of the jurisdiction of the 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 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.

(3) When any order is made by the District Magistrate, he shall forthwith report, the fact to the State Government together with the grounds on which the order has been made and such other particular as, in his opinion, have a bearing on the matter, and no such order shall remain enforce for more than 12 days after the making thereof unless, in the meantime, it has been approved by the State Government.

Provided that where under Section 17 the grounds of detention are communicated by the officer

making the order after 05 days but not later than 10 days from the date of detention, this sub-section shall apply subject to the modification that, for the words “12 days” the words “15 days” shall be substituted.

From bare reading of Section 12 of the Act, it is clearly manifested that before passing of detention order, in respect of a person who is already in jail, the detaining authority must be satisfied that (i) the person concerned is an anti-social element as defined in the Act, (ii) it is necessary to prevent the person from acting in any manner prejudicial to the maintenance of public order; and (iii) such activity of anti-social element cannot be prevented without passing detention order; (iv) there is likelihood of his release from jail.

From reading of the aforesaid detention order, it would appear that while passing the order of detention the District Magistrate, Khagaria, was aware of the fact that the petitioner was in judicial custody in Khagaria jail in connection with Khagaria (Chitragupta Nagar) P.S. Case No. 305/2015, registered under Sections 387, 506 and 120(B) of the I.P.C. and the District Magistrate had also mentioned that the petitioner was making efforts to get bail and there was likelihood of his release. So far another case i.e., Khagaria P.S. Case No. 719/2014, registered

under Sections 364, 379, 506 read with Section 34 of the I.P.C., which was referred to, in the grounds for detention, it is mentioned that the petitioner had already been granted bail in the said case.

There is specific contention of the petitioner in paragraph no. 6 of the writ application that the bail application of the petitioner in Khagaria P.S. Case No. 719/2014 was already been rejected up to the Learned Sessions Judge in the month of March, 2015, itself and thereafter the petitioner had not moved any application for grant of bail before this Court till the order of detention came to be passed and further specific contention that the petitioner had never ever filed any bail application in Khagaria P.S. Case No. 305/2015 dated 14.05.2015 and there was no likelihood of release of the petitioner by that time.

In the counter-affidavit, there is no specific denial of the facts stated and submitted by the petitioner referred above.

Therefore, it would be clear that the order of detention is based on incorrect fact and the District Magistrate, Khagaria, did not make any enquiry regarding the stage of bail application of the petitioner in the said two cases, referred in the grounds for detention, which sufficiently indicates about his complete mechanical application of mind, if not any extraneous reasons. As



a matter of fact, the detention order does not reflect any cogent details much less bail application number filed by the petitioner in connection with Khagaria (Chitragupta Nagar) P.S. Case Nos. 305/2015 and 719/2014, which is suggestive to the fact that the District Magistrate, Khagaria, acted mechanically on incorrect information given by the Superintendent of Police, Khagaria, vide Letter No. 2564 dated 19.06.2015.

The law is well settled that the detention order can be passed with regard to a person also, who is in jail custody under the Act. However, in such cases there has to be clear application of mind and objective satisfaction has to be expressed in order to qualify the condition for passing the detention order that there is possibility of release of the petitioner on bail and after being so released on bail, he would be indulging in such activity prejudicial to the maintenance of public order and which cannot be prevented save and except passing the order of detention.

The law has been settled in the case of Vinod Singh –Vs- The District Magistrate, Dhanbad, reported in 1986(4) SCC 416, wherein it has held as follows:-

“It is well settled in our constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various



provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. In the instant case when the actual order of detention was served upon the detainee, the detainee was in jail. There is no indication that this factor or the question that he said detainee might be released or that there was such a possibility of his release, was taken into consideration by the detaining authority properly and seriously before the service of the order. A bald statement is merely an ipse-dixit of the officer. If there were cogent materials for thinking that the detainee might be released then these should have been made apparent. External vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedom of our citizens”.

In the light of aforementioned settled principle of law, we come to the conclusion that mere mentioning of the fact by the District Magistrate in his order that “the petitioner is in jail custody and trying for bail” would be mere ipse-dixit of the detaining authority. In the present case, there is complete lack of



any cogent and reliable material on the basis of which the District Magistrate, Khagaria, passed the detention order dated 29.06.2015 recording his satisfaction. As noted above, petitioner has not moved any bail application in connection with Khagaria (Chitragupta Nagar) P.S. Case No. 305/2015 dated 14.05.2015 and in another case i.e., Khagaria P.S. Case No. 719/2014, the bail application of the petitioner had already been rejected up to the court of learned Sessions Judge in the month of March, 2015 itself and thereafter petitioner did not move any application for grant of bail before the Sessions Court or before this Court. Therefore, his satisfaction in respect of 'likelihood of release' of the petitioner in the detention order is vitiated in itself.

We, therefore, of the considered opinion that the impugned order of detention and consequent order of confirmation of order of detention, require interference, especially in absence of any cogent material relating to likelihood of release of the petitioner from jail, on the date of passing of the order of detention.

In view of the discussions, made in the foregoing paragraphs, the order of detention dated 29.06.2015 (Annexure-3) and the order dated 05.08.2015 of confirmation of detention order (Annexure-1) are hereby quashed and the writ petition is,

accordingly, allowed.

(Sudhir Singh, J)

I agree.
(Ramesh Kumar Datta, J):-

(Ramesh Kumar Datta, J)

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