

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1199 of 2016

Arising Out of PS.Case No. 124Year 2016 Thana Krishna Brahm, District- BUXAR

=====

Dharmraj Yadav, son of Ramnath Yadav, resident of village- Chhatanwar, P.S.-
Krishna Brahm, District- Buxar.

.... Petitioner

Versus

1. The State of Bihar through Under Secretary to Govt. of Bihar, Home (Police) Department, Old Secretariat, Bihar, Patna.
2. District Magistrate, Buxar, District- Buxar.
3. Superintendent of Police, Buxar, District- Buxar.
4. Deputy Superintendent of Police, Dumraon, Sub Division, District- Buxar.
5. Officer-in-Charge, Krishna Brahm Police Station, District- Buxar.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Bachanjee Ojha, Advocate.

For the State-Respondents : Mr. Prabhu Narayan Sharma, A.C. to A.G.

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 19-12-2016

By the present writ petition the sole petitioner challenges the order of detention dated 8.9.2016 as approved by the State Government, detention order being passed with reference to Section 12 of the Bihar Control of Crimes Act, 1981. The facts are not in dispute.

Earlier a detention order was passed by the District Magistrate, Buxar, under Section 12(2) of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as the 'Act'). As required by Section 12(3) thereof, it was sent to the State Government for approval. It is



not in dispute that by order dated 19.5.2015, the State Government did not approve the detention rather they revoked the detention. Petitioner was thus released from custody. Soon thereafter, on 27.6.2016 an F.I.R. was lodged by Krishna Brahm Police Station, District Buxar, inter alia, alleging that police got a tip-off that the petitioner was organizing a gang to perpetuate criminal activities at his house. A police team was organized and a raid was conducted. The petitioner and other persons manage to escape after several rounds of firing from their guns/rifles. On basis of this, case against the petitioner and others were registered, inter alia, under Section 307 of the Indian Penal code and various provisions of the Arms Act. Curious to note that even though, it was an organized raid by the police on prior information to them, they are unable to arrest even a single person or recovered any incriminating article whatsoever from the residential premises where they were said to have assembled. Several rounds of ammunitions were used but not a single empty cartridge was at all recovered. Now, making this case as the basis, on 20.7.2016, a fresh order of detention was passed by the District Magistrate, Buxar, which is Annexure-2 to the writ petition. In the detention order, apart from this case, one another case instituted under Section 414 of the Indian Penal Code and Arms Act of the year 2014 is mentioned. As a matter of history, several other cases are also mentioned which are of



distant past. This order of detention as issued by the District Magistrate, Buxar, under Section 12(2) of the Act has since been approved by the State Government. Petitioner is in custody.

Pursuant to earlier order of this Court, counter affidavit has been filed, one on behalf of the District Magistrate, Buxar, and another on behalf of the Jail Superintendent. There is no counter affidavit on behalf of the State.

Heard the parties at length.

From the facts noted above, it would be seen that earlier order of detention, as passed by the District Magistrate, Buxar, was disapproved by the State and petitioner's detention was revoked as late as 19.5.2015. On 27.6.2016, petitioner was implicated in the case, as noted above, with no evidence on record, except aggression of policemen themselves. There was no arrest, no recovery. Making this a case of 2016 as a ground for detention, the present detention order has been issued.

So far as the case of 2014 is concerned, that is too stale a matter to look into, we are dealing with not an ordinary claim in detail, pursuant to a criminal case, but we are dealing with the case of preventive detention, which is a serious flaw into right of a citizen. It cannot be mechanically or with non-application of mind passed or used. Apart from the stale case of 2014, the only other case is of 2016,



as noted above, which is hardly anything. It is a solitary instance that does not make petitioner a habitual offender so as to attract clause 5 as anti social element for purposes of the said Act.

That being the position, the petitioner cannot be held to be an anti social element, the detention order cannot be upheld. It is accordingly set aside. The petitioner has to be set at liberty, if not required in any other case.

The writ petition is allowed.

(Navaniti Prasad Singh, J)

(Sanjay Priya, J)

S.Ali/Ravi

AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	22/12/2016
Transmission Date	N/A.

