

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.871 of 2015

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Golu Yadav @ Rajnish Yadav, S/o Shankar Yadav, R/o Panchawati Ward
No. 17 Ganjala Saharsa, P.S. + District - Saharsa.

.... Petitioner

Versus

1. The State of Bihar.
2. Secretary Home (Police) Department, Bihar, Patna.
3. Under Secretary Home (Police) Department, Bihar, Patna.
4. District Magistrate, Saharsa.
5. Superintendent of Police, Saharsa.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shiva Shankar Sharma, Advocate.
For the Respondents : None.

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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 RAMESH KUMAR DATTA)

5 11.02.2016 This writ application has been preferred, seeking quashing of the detention order contained in Memo No. 1474-2/Legal, Saharsa, dated 16.06.2015 (Annexure-1), issued by the District Magistrate, Saharsa, passed against the petitioner and the confirmation of the detention order dated 16.06.2015 referred above, contained in Memo No. 7/C.C.A.-10-23/2015 Home Police 5163/Patna dated 24.07.2015(Annexure-6), issued under the signature of the Under Secretary, Home(Police) Department, Government of Bihar, Patna, by which there has been direction to detain the petitioner till 15.06.2016.

The brief facts leading to this writ application are as follows:-



The Superintendent of Police, Saharsa, vide office Letter No. 2327/CR, Saharsa, dated 29.05.2015, enclosing report of the Sub-Divisional Police Officer, Saharsa, made a report to the District Magistrate, Saharsa, mentioning about the petitioner, being an active, dreaded, notorious and habitual offender thus an anti-social element, whereupon, the District Magistrate, Saharsa, vide Memo No. 1474-2/Legal, Saharsa, dated 16.06.2015, passed the detention order, in C.C.A. Case No. 6/2015 against the petitioner, who was already in jail in connection with Saharsa Sadar P.S. Case No. 377/2015 dated 13.05.2015, in exercise of power conferred under Section 12(2) of the Bihar Control of Crime Act, 1981(hereinafter referred to as 'the Act'). Thereafter, the detention order dated 16.06.2015 was made for approval together with the grounds, which came to be approved by the Under Secretary, Home(Police) Department, Government of Bihar, Patna, vide order dated 22.06.2015. The said order of detention dated 16.06.2015 and the order of affirmation of detention dated 22.06.2015 were communicated to the petitioner on 16.06.2015 and 11.07.2015 respectively. The petitioner filed a petition before the District Magistrate, Saharsa, through the Superintendent of Jail, Saharsa, on 27.06.2015 making prayer therein to exonerate him from the effect of notice issued under Section 12 of the Act. Thereafter, the petitioner filed a



representation before the Government of Bihar, Home(Police)Department, through the Superintendent of Jail, Saharsa, on 03.07.2015 contending therein that detainee is neither an active dreaded, notorious, criminal nor he is an anti-social element and the criminal cases already instituted against the detainee, do not come within the category of offences mentioned in Section 3 of the Act, so requested to exonerate him from the detention order passed against him. The said representation of the petitioner was rejected by the State Government vide Memo No.-7/C.C.A-10-23/2015 Home(Police)4899/Patna, dated 14.07.2015 and the same was communicated to the petitioner also. Thereafter, the detention order passed against the petitioner was made for reference to the Advisory Board, constituted under Section 18 of the Act together with the grounds and the representation, made by the petitioner. Whereupon the Advisory Board after hearing the petitioner in person opined that sufficient grounds exist for detention of the petitioner. Thereupon the State Government taking into account the opinion of the Advisory Board confirmed the detention order, exercising power conferred under Section 21(1) and Section 22 of the Act vide order contained in Memo No.-7/C.C.A.-10-23/2015 Home(Police) 5163/Patna dated 24.07.2015 with a direction for detention of the petitioner till 15.06.2016.



The contention of the petitioner is that he is neither an active, dreaded, notorious criminal nor he is an anti-social element and the detention order has been passed in mechanical manner at the instance of political enemy of the petitioner. It is also contended that the detention order does not mention substance of the allegation against the petitioner and the order of detention has been passed in violation of the provisions of Section 17 of the Act and the further contention is that the representation of the petitioner dated 03.07.2015 was rejected vide order dated 14.07.2015(Annexure-5) on flimsy grounds, whereas the petitioner does not come within the definition of 'Anti-social element' as envisaged in Section 2(d) of the Act., therefore, the order under challenge require interference.

A counter-affidavit has been filed on behalf of the respondent nos. 1, 2 and 3 contending therein that the petitioner is an anti-social element in terms of the provisions of the Act and the activity of the petitioner is prejudicial to maintenance of public order. The detention order together with the grounds of detention had already been served upon the petitioner through the Superintendent of Jail, Saharsa, on 16.06.2015. The detention order came to be approved by the competent authority within the statutory period of 12 days and thereafter the matter was referred to the Advisory Board under Section 19 of the Act. The



representation of the petitioner was received to the Department on 06.07.2015, whereupon the District Magistrate, Saharsa, was asked to furnish his comment in respect of the representation of the petitioner, which was received on 08.07.2015 and after thorough examination, the representation of the petitioner was rejected by the State Government, vide Annexure-5. The detention order was placed before the Advisory Board, which opined that there being sufficient grounds for detention of the petitioner. Thereafter, the State Government confirmed the aforesaid detention order, in exercise of power conferred under Sections 21(1) and 22 of the Act.

The respondent no. 4 (the District Magistrate, Saharsa) has also filed a counter-affidavit, stating that the detention order against the petitioner was passed considering the report of the Superintendent of Police, Saharsa, vide Letter No. 2327/CR dated 29.05.2015, wherein as many as 08 criminal cases were reported to be instituted against the petitioner and by that time the petitioner was in judicial custody in connection with Saharsa Sadar P.S. Case No. 377/2015 and was making attempts for getting bail in he said case and the detention order was already served upon the petitioner on 16.06.2015 together with the grounds.

The petitioner has also filed a supplementary affidavit

after filing of the counter affidavit by the respondents taking a new plea in paragraph no. 6 of the supplementary affidavit, which reads thus:-

“6. That in the present case no bail application of the petitioner is pending as per Annexure-1, which was supplied to the petitioner and therefore, the detention order under the preventive detention law was wholly illegal vide catena of decision of the Hon’ble Apex Court.”

Now, the points arise for consideration of this Court are:-

where the detention order dated 16.06.2015(Annexure-1) passed by the District Magistrate, Saharsa, in exercise of power conferred under Section 12(2) was required to be passed and whether the order of conformation of detention dated 24.07.2015 (Annexure-6) 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 provision of the Act, which reads thus:-

“2(d) ‘ Anti-social element’ means a person who-(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abates the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code;

(ii) Habitually commits or abates the commission of offences under the suppression of immoral traffic in Women and Girls Act, 1956.

(iii) Who by words or otherwise promotes or attempts to promote on grounds of

religion, race, language, caste or community or other grounds whatsoever, feeling of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing in decent remarks to or teasing Women or Girls; or

(v) who has been convicted of an offences under Sections 25,26,27,28 or 29 of the Arms Act, 1959.

After considering the rival contentions of the parties and materials available on record, we find that the District Magistrate, Saharsa, considering the report made by the Superintendent of Police, Saharsa, passed the detention order dated 16.06.2015(Annexure-1) against the petitioner assigning the reasons for detention, mentioning in the order that the petitioner is an anti-social element and as many as 08 criminal cases being registered against him and the detinue has been charge sheeted in all those cases. The said detention order further mentions about Saharsa Sadar P.S. Case No. 377/2015 dated 13.05.2015 registered under Sections 147, 148,149, 341,323, 307, 504, 384, 386 and 387 of the I.P.C. in which, the petitioner was in judicial custody and he was trying for bail, so there was likelihood of his release from Saharsa Jail. The said detention order further mentions the facts that there was no alternative way to prevent the detinue from acting in any manner prejudicial to the maintenance of public order, except to pass detention order in terms of Section 12(2)of

the Act against the petitioner.

The petitioner did not refute the facts, which formed basis of his detention, whereas the detention order together with the grounds were served upon him on 16.06.2015 through the Superintendent of Jail, Saharsa, in compliance of Section 17 of the Act. In response whereof, the detenue made a representation before the District Magistrate as well as the State Government vide Annexures-3 and 4 respectively, but nowhere, we find any kind of rebuttal of the very fact, regarding the 08 criminal cases as indicated in the detention order being registered against him, nor the detenue has made specific denial of the fact either in his representation before the District Magistrate or before the State Government that by the time of passing of the detention order he was not making any attempt to get bail in Saharsa Sadar P.S. Case No. 377/2015. The pleadings of the writ petition do not reflect that detenue had taken such plea while making his statutory representation against the detention order or before the Advisory Board. Thus, there is no denial of the fact mentioned in the detention order that detenue was trying to get bail, when the detention order came to be passed against him by the District Magistrate, Saharsa.

One more fact is also significant to notice here that after filing of the counter-affidavit by the respondent authorities and



when the matter was taken up for hearing, a supplementary affidavit was filed on behalf of the petitioner, raising a vague contention in paragraph no. 6 of the supplementary affidavit, which has already been quoted in foregoing paragraph. From perusal of the contention made in paragraph no. 6, we find that even in the supplementary affidavit, the petitioner has not made any specific denial of the fact that by the time of passing of detention order he had not made any application in the competent court for grant of bail and there was no likelihood of his release from the jail in connection with the case mentioned in the detention order.

Considering the criminal antecedents of the petitioner, as there being 08 criminal prosecutions pending against him and the offences for which cases have been registered, are punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. We are of the view that the petitioner comes within the definition of 'Anti-social element' as defined in Section 2(d) of the Act.

The judgment referred and relied by the learned counsel for the petitioner are not applicable in the facts and circumstances of the case.

In view of the foregoing discussion, we do not find any reason to interfere in the order of confirmation of detention passed against the petitioner, dated 24.07.2015(Annexure-6) issued under

the signature of the Under Secretary, Home (Police) Department,
Government of Bihar, Patna.

The writ petition is, accordingly, dismissed. However,
there shall be no order as to cost.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

U.K./-A.F.R.

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