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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.506 of 2016

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

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Moti Yadav, Son of Karelal Yadav, Resident of Village- Sadhua, P.S. Gopalpur (Rangra), District- Bhagalpur. .... Petitioner.

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar.
2. The Principal Secretary, Home, Government of Bihar, Patna.
3. The District Magistrate, Bhagalpur.
4. The Superintendent of Police Naugachia. .... Respondents.

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Appearance :

For the Petitioner : Mr. B.P. Pandey, Sr. Adv.
Mr. Ranjan Kumar Jha, Adv.

For the Respondents : Mr. Yogendra Kumar Singh, AC to SC-15

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 27-06-2016

Heard Mr. B.P. Pandey, learned senior counsel for the petitioner and learned counsel for the State.

By this writ application, the petitioner challenges the order passed under Section-3 (3) of the Bihar Control of Crimes Act, 1981 (hereinafter in short referred to as the Act), by the District Magistrate, Bhagalpur, being order dated 29.03.2016 in Crime Control Case No.109/2015-16.

On behalf of the petitioner, Mr. Pandey, learned senior counsel submits that the order of surveillance as passed cannot be sustained because on the same grounds when an order of detention was passed under Section-3 (3) of the Act, in very recent past, State Government did not approve. Now, the order is being passed only because of panchayat election and to ensure that petitioner is not available in his panchayat. Even otherwise the nature of surveillance order passed is quite unreasonable.

In order to appreciate the submission, the first thing to be noticed is that in the list of criminal cases, there are only two cases which have been referred to and those are also more than a year old, being Gopalpur (Rangra) P.S. Case No.48 of 2015 dated 27.03.2015 and Gopalpur (Rangra) P.S. 132 of 2015 dated 16.06.2015. The impugned surveillance order states that for a period of six months from 29.03.2016, the petitioner would have to mark his attendance at Shahkund Police Station apart from informing his Police Station i.e Gopalpur (Rangra) of his movements regularly. On the face of it, this surveillance order seems to be unreasonable because of the reason that the distance between Gopalpur (Rangra) P.S. within the panchayat of the petitioner and the Shahkund P.S. is not only 40 kms. but

it is 40 kms. of damaged road across the river Ganga. It would almost take whole day in making the round trip. This, by no stretch of imagination, can be a reasonable direction even if we concede that petitioner is an antisocial element.

Apart from this, Mr. Pandey has brought to our notice the fact that recently on 29.10.2015, when on the same ground and adding to it several cases of the past, spanning over two decades, the District Magistrate, sought to detain the petitioner by an order under Section-3 (3) of the Act, the same was specifically disapproved by the State Government itself but, later on, only to circumvent the disapproval order, this surveillance order was passed on the same very ground. This is not permissible because, in effect, the surveillance order is a detention order, inasmuch as the petitioner is kept moving against his will away from his home through out the day, day after day, for almost six months.

We may add that the effort was to ensure that there is peace in the panchayat election. This could have been achieved by asking the petitioner to mark his attendance at the local Police Station. Panchayat election having taken place and the petitioner having been elected as member of the panchayat, the purpose also seems to have outlived its utility.

In that view of the matter and in view of the facts noted above, we are unable to uphold the surveillance order, as passed by the District Magistrate, Bhagalpur. Accordingly, the order dated 29.03.2016 passed by the District Magistrate, Bhagalpur, in Crime Control Case No.109/2015-16 is set aside. This writ application is allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/-

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