

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1228 of 2015

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

Badri Yadav @ Badri Kumar Yadav @ Rajeev Yadav, Son of Umesh Yadav, resident of village - Belwara, P.S. Simri Bakhtiyarpur, District – Saharsa.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Govt. of Bihar, Patna
2. The District Magistrate, Saharsa
3. The Superintendent of Police, Saharsa
4. The Deputy Superintendent of Police, Saharsa Sadar
5. The Jail Superintendent, Saharsa

.... Respondents

Appearance :

For the Petitioner : Mr. Mr. Pramod Mishra, Advocate
Mr. Arun Kumar, Advocate
For the Respondents : N. Yahya, G.P.13

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And

HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 11-01-2016

This is a habeas corpus application by the sole petitioner who has been detained under the provisions of Bihar Control of Crime Act, 1981 (hereinafter referred to as the “Act”), by orders of the District Magistrate, Saharsa, upon a report received from Superintendent of Police, Saharsa.

It is alleged that the petitioner is involved in a lot of criminal activities creating terror in the locality. There



are no witnesses ready to name him. He has been made an accused in two cases relating to heinous offences. The detention order have been passed in anticipation of his release. Petitioner filed representation to the State Government against his detention. In the meantime, in the two cases in which he was in judicial custody, he was granted bail by this Court by order dated 21.04.2015 passed in Cr. Misc. No. 10432/2015 and order dated 08.07.2015 passed in Cr. Misc. No. 20939/2015 arising out of Bangaon P.S. Case No. 85/2014 and Bangaon P.S. Case No. 79/2014 respectively.

From the counter affidavit, learned counsel points out that his representation to the State Government was considered by the Principal Secretary, Department of Home, Government of Bihar on 23rd of July 2015, and thereafter placed before the Chief Minister for his consideration only on 2nd of August 2015, i.e. after 10 days. He thus submits that in terms of Article 22(5) of the Constitution of India, this 10 days delay was an inordinate delay which vitiates his detention. For the said purpose, reliance has been placed on a recent judgment of the Apex Court in the case of **Ummu Sabeena vs. State of Kerala**

and others since reported in **(2011) 10 SCC 781**, and other decisions on that line.

We have heard learned counsel for the petitioner and learned counsel for the State. In the counter affidavit, there is absolutely no explanation as to why it could take 10 days for the file to reach from Principal Secretary, Department of Home to the Chief Minister. It must be remembered that we are not dealing merely with an alleged criminal, but we are dealing with a citizen who has constitutional rights and one of them is Article 21 subject to Article 22 of the Constitution. Learned counsel for the State submits that in the period aforesaid, there were two Saturdays and two Sundays, and the Chief Minister and the Principal Secretary being the highest officers in persons in the State hierarchy, being very busy, the delay in consideration of the representation was not inordinate and would not vitiate the detention.

Having considered the matter, we cannot agree. The constitutional right of a citizen under Article 21 does not go on leave or holidays on Saturdays and Sundays. Constitution makes no exception and guarantees liberty irrespective of Saturdays and Sundays. Similarly,



constitution also does not make an exception as to how busy the government is. Because, in matters of civil liberty of a citizen, the government has to give top priority to such matters. Civil liberties are not to be left at the mercy of the executive.

In view of the aforesaid, we are constrained to hold that solely because of negligence on the part of the State to expeditiously deal with the matter of preventive detention, we have to hold that the right to liberty of the petitioner has been infringed. Let writ of habeas corpus be, accordingly, issued, and consequently, the petitioner be directed to be released from custody unconditionally subject to petitioner being not required to be detained in any other case.

The writ petition is, accordingly, allowed.

Let a copy of this order be communicated to the Chief Secretary, Government of Bihar, Patna.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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