

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1195 of 2016

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

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Anant Singh @ Anant Kumar Singh, Son of Late Chandradeep Singh, resident of Village- Nadawan, P.S. Barh, District – Patna, at Present 1 Mal Road, P.S.- Sachivalya, District Patna. Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
 2. The Under Secretary, Department of Home (Police), Government of Bihar, Patna.
 3. The District Magistrate, Patna.
 4. The Senior Superintendent of Police, Patna. Respondents.
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Appearance :

For the Petitioner : M/s P.K. Shahi, Sr. Adv., Vikash Kumar & Navin Kumar, Advocates.

For the Respondents : Mr. Chitranjan Sinha, PAAG-II
Mr. Niraj Kumar Sinha, AC to PAAG-II

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE SANJAY PRIYA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-01-2017

By this writ petition under Article-226 of the Constitution, the petitioner challenges his preventive detention, as made by orders of the District Magistrate, Patna, being order dated 21.09.2016, as approved by the State Government vide order dated 26.09.2016 and also approved by the Advisory Board by order dated 20.10.2016, authorizing the preventive detention of the petitioner in Model Central Jail, Beur, Patna for a period of one year under the provisions of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as the 'Act').

2. Counter affidavit and rejoinders having been filed, we



- 2 -

have heard Sri P.K. Shahi, learned Senior Counsel appearing in support of the writ petition and Sri Chitranjan Sinha, learned Principal Additional Advocate General-II for the State at length.

3. The petitioner is an elected member of the Bihar Legislative Assembly from Mokama constituency in the district of Patna. The facts, in brief, that have been brought on record by the parties are noted hereunder.

4. On 05.09.2016, the District Magistrate-cum-Collector, Patna issued and served an order of preventive detention under Section 12 (2) of the Act on the petitioner, who was already in judicial custody in relation to Patna (Kotwali) P.S. Case No.207 of 2016 dated 10.01.2016, ordering his preventive detention for a period of one year, on the ground that though he has been in judicial custody, he is desperately trying for bail and his release would be detrimental to public peace. In the ground of detention, three cases have been mentioned in which petitioner was alleged to be involved which are all within a year. They related to grave offences, *inter alia*, under Sections 387, 302, 307 of the Indian Penal Code and other sections of the Indian Penal Code including various provisions of the Arms Act. As a part of his past conduct 31 cases have been mentioned in which, allegedly, petitioner was found involved, all of which related to serious



- 3 -

offences over the past three decades. The detention order having been served on the petitioner, on 12.09.2016 the petitioner made a representation against his detention to the District Magistrate through the Jail Superintendent, Model Central Jail, Beur, Patna.

5. It appears that, as required by Section 12 (3) of the Act, State Government approval of detention order as passed by the District Magistrate, Patna was not received within the time prescribed for approval. By order dated 17.09.2016, the District Magistrate communicated to the petitioner that the detention order as passed on 05.09.2016, having not received, the approval of the State Government becomes ineffectual. This order was served on the petitioner on 21.09.2016.

6. On 21.09.2016 itself, a fresh order of preventive detention under Section 12 (2) of the Act, being the impugned order, was passed by the District Magistrate, Patna as against the petitioner and was served on him on the same date while he was still in judicial custody. This order of detention listed certain cases in which the petitioner was accused as also several 'Sanhas' that were very recently lodged in respect of the reports which were received regarding apprehended crimes likely to be committed by the petitioner. It was also stated that while petitioner was in judicial custody, he conspired to commit



- 4 -

offences with the help of his associates outside the jail and his release would create serious problems for the people of the locality. Again in the detention order, a list of over 31 cases of serious offence in which petitioner is alleged to be involved has been given as a part of petitioner's antecedent.

7. It is not in dispute that this time on 26.09.2016, the State Government approved the preventive detention order of the District Magistrate dated 21.09.2016, which preventive detention order was for a period of one year. On 28.09.2016, the petitioner through the Superintendent of Jail filed a representation to the District Magistrate, the detaining authority. It is also not in dispute that having considered the representation, on 04.10.2016 the District Magistrate, having taken opinion of the Superintendent of Police, Patna, sent his recommendation to the State Government to reject the representation. On 06.10.2016 the petitioner was informed that his representation dated 28.09.2016 was rejected by the State Government. On 06.10.2016 itself, the petitioner is said to have made a separate representation to the State Government against the detention order dated 28.09.2016. It is alleged by the petitioner that this representation to the State Government has not received the consideration of the State Government.



- 5 -

8. In the counter affidavit filed by the State, it is stated that as the representation dated 06.10.2016 to the State was virtually a replication of the representation as made by the petitioner earlier to the District Magistrate, being representation dated 28.09.2016, which had already been considered and rejected by the State Government upon recommendation of the District Magistrate, there was no need to pass any order thereon. As petitioner's detention was for a period of one year, the petitioner was produced before the Advisory Board, which confirmed his detention on 20.10.2016.

9. On behalf of petitioner, challenging his preventive detention, the grounds taken, *inter alia*, are, that the detention is based on stale charges; the first preventive detention order having not been approved, the second preventive detention order with slight changes and mention of three new 'Sanhas' lodged in recent months was a *mala fide* exercise of power; the representation filed to the State Government on 06.10.2016, not having been disposed of by the State, his detention is rendered illegal; there is non-application of mind inasmuch as out of 31 cases, that have been mentioned as a part of history, to show his criminal antecedents, petitioner has already been acquitted in 18 of them and, lastly, he has not been informed in the detention



- 6 -

order as to whom he has to make representation.

10. In reply, the Principal Additional Advocate General-II has submitted that the detention is not based on stale charges, inasmuch as the grounds for detention are cases and reports of recent origin, whereas as a part of history to show that the petitioner is a history-sheeter involved in large number of serious offences over the past few decades, old cases have been mentioned. It is then submitted that the first detention order had neither been approved or disapproved by the State within the period required, it was necessary in the interest of public peace to issue the second detention order, which referred two new incidents of very recent past. It was further submitted that as the representation of the petitioner as made on 28.09.2016 to the District Magistrate, Patna was considered by the District Magistrate, who recommended for its rejection to the State and the State having examined and rejected the same, the second representation, as made to the State on 06.10.2016, which was nothing but a replication of the first representation, which had already been rejected by the State, there was no purpose in passing fresh orders of rejection of representation.

11. In regards non-application of mind by the detaining authority in passing the detention order, it was submitted on



- 7 -

behalf of the State that the detention order would itself show that the District Magistrate had considered in detail the current cases as against the petitioner and it was only as a part of history, he has recorded the number of case in which the petitioner was, in past, found involved though acquitted in some of the cases as witnesses were not ready to depose against the petitioner. In respect of submission that the petitioner was not informed as to his right to make representation, it was submitted that in the detention order itself, it was clearly stated that in case the petitioner desires to make representation against his detention, he could do so through the Jail Superintendent. It was, accordingly, submitted that the detention of the petitioner could not be challenged and considering that the petitioner was undisputedly a history-sheeter his detention was not only valid but desirable in the larger public interest. It may be noted, as pointed out by the State, that even though the petitioner continued to be in judicial custody, he was found conspiring in getting offences committed outside through his associates.

12. We have considered the arguments and perused the records. In our view, it cannot be disputed that petitioner is a history-sheeter with long standing records of criminal antecedents. He is involved in grave offences. Even if we accept



- 8 -

that out of 31 cases which have been mentioned as a part of history to show his antecedents, out of which in 18 cases he has been acquitted, then, on his own showing, there are 13 serious cases of offences in which, apart from recent cases, he is facing trial. He is, thus, clearly an antisocial element and habitually committing offences as contemplated under the Act. According to us, the submissions on behalf of the State are correct. The grounds of detention are distinct from the background history, which is only to show the criminal past of a person. The grounds of detention enumerate recent cases within a span of about a year. It is only as a part of history to show that petitioner is a history-sheeter, the list of 31 cases have been given in which petitioner's involvement had been found. They are not grounds for detention. They are only to show the criminal antecedents of the petitioner. It is thus not a case where detention order is based on stale cases. State is also correct in submitting that the second detention order that was passed on 21.09.2016 notes apart from old cases other cases in the grounds justifying detention including three 'Sanhas' entries in different police stations with regard to the conduct of the petitioner. On this count also the detention cannot be said to be vitiated.

13. As to the submission that the representation as made



- 9 -

to the State Government on 06.10.2016 not having been disposed of by the State Government and its reply by the learned Principal Additional Advocate General-II, we have seen the two representations filed by the petitioner (i) on 28.09.2016 purported to be to the District Magistrate and (ii) filed on 06.10.2016 purporting to be to the State Government, both of which are annexed to the writ petition, being Annexures-7 and 9 respectively. They are virtually the same. The representation was first considered by the District Magistrate, who opined for its rejection. It was then considered by the State Government, which also took the same view and rejected the representation dated 28.09.2016. There being nothing different in the two representations and both the detaining authority, the District Magistrate and the approving authority, the State, having already applied its mind, there was no gain in passing fresh order of rejection.

14. In regard, the allegation that the detention order was passed out of malice. All we can say is that the fact that the petitioner is accused in several serious offences and is a history-sheeter not having been denied, the question of malice becomes irrelevant. Lastly, as to the submission that the petitioner was not informed as to whom he is to make representation to, suffice



- 10 -

to say that the detention order itself mentions that the representation against the detention order can be made through the Jail Superintendent. The petitioner himself admits that he is virtually an illiterate person who cannot read or write. He is advised by his well wishers and Lawyers, who are well informed. He made detailed representations. They were considered independently both by the District Magistrate and the State. We, thus, see no reason to hold that any prejudice has been caused to him.

15. Thus seen, the petitioner undisputedly a history-sheeter with long antecedents of criminal history and, in the facts and circumstances as noted above, we find no constitutional infirmity or illegality in his preventive detention.

16. Thus, this writ petition merits no consideration and is dismissed accordingly.

(Navaniti Prasad Singh, J.)

Sanjay Priya, J. I agree.

(Sanjay Priya, J.)

Trivedi/-

AFR/NAFR	AFR
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