

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.268 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Atma Yadav, son of Sri Rambahadur Yadav, resident of Village- Majhagaon, P.S.- Chand, District- Kaimur (Bhabua).

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, (Home), Home Department of Government of Bihar, Patna.
3. The Under Secretary (Home), Home Department of Government of Bihar, Patna.
4. The District Magistrate, District- Kaimur (Bhabhua).
5. The Superintendent of Police, District- Kaimur (Bhabhua).
6. The Assistant Superintendent of Police, Bhabhua, District- Kaimur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rakesh Kumar Shrivastava, Advocate.

For the Respondents : Mr. Vikash Kumar, A.C. to A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-05-2017

Challenging the order dated 23.07.2016 passed by the learned District Magistrate, Kaimur at Bhabhua, exercising the power under Section 12(2) of the Bihar Control of Crimes Act, 1981 and directing for detention of the petitioner for a period of one year and further challenging the order passed by the State Government on 08.09.2016 affirming the order passed by the learned District Magistrate, Kaimur at Bhabhua and detaining the petitioner under the aforesaid preventative detention Act for a period of one year till 19.07.2017, this writ petition has been filed.



Even though during the course of hearing by placing reliance of the judgment rendered by the Supreme Court in the case of **Cherukuri Mani Vs. The Chief Secretary, Government of Andhra Pradesh and Ors. 2015 (13)SCC 722**, an argument was canvassed before us to say that the detention order cannot be passed for a period of one year and at one go it has to be passed maximum for a period of three months at one time and, therefore, the impugned order cannot be sustained.

Learned counsel for the State invites our attention to various other judgments of this Court, namely, **Roshan Kumar Thakur @ Roshan Thakur Vs. The State of Bihar through the Chief Secretary & Ors; 2016(2) PLJR (HC) 121** and another judgment of a Division Bench of this Court in the case of **Sanjeev Kumar @ Pappu Sipahi @ Sanjeev Kumar Singh Vs. The State of Bihar & Ors.**, passed in Cr. W. J. C. No. 1056 of 2014 decided on 20.01.2015 wherein after considering the case of Cherukuri Mani(supra) and placing reliance of an earlier judgment of the Supreme Court in the case of **Arun Ghosh Vs. The State of West Bengal AIR 1970(1)SCC 98**, the principle laid down in the case of Cherupuri Mani(supra), has been distinguished. However, on account of the fact that we find the order of detention passed by the learned District Magistrate, Kaimur at Bhabhua to be vitiated in law on



various other reasons, we keep the issue as detailed above open to be considered in a appropriate case as and when required.

As far as the present case is concerned, we find in this case after show cause was issued to the petitioner on 14.07.2016 with regard to his involvement in four cases and when the matter was considered by the learned District Magistrate, the petitioner was already in custody and was in jail in view of his involvement in another criminal case for the offences under Sections 147, 148, 149, 341, 326, 307, 504 of the I.P.C. and 27 of the Arms Act and when the petitioner was already in custody the law mandates the District Magistrate to record the specific reason to say that in case the detenue is already in custody, there is likelihood of being released on bail and if released on bail chances of his creating the law and order problem pertaining to the public disorder and public safety is existing. This requirement of law has not been fulfilled by the District Magistrate in the impugned order. This is sufficient to quashing the impugned order as the applicant was already in detention and the reasons recorded by the District Magistrate in this regard does not the requirement of law. In as much as satisfaction is not recorded by the District Magistrate to say that the petitioner who is already under detention is likely to get bail and if released he may create law and order problem or his release may be detrimental to public safety and interest. Accordingly, left all



other questions before us in appropriate case finding order of detention is unsustainable.

On the aforesaid account, we allow this petition quashing the order dated 23.07.2016 passed by the District Magistrate, Kaimur at Bhabhua and the order passed by the State Government on 08.09.2016.

The petition stands allowed and disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	N/A
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