

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.746 of 2017

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

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Bhopat Yadav @ Pramod Yadav, Son of Late Dawarika Yadav, Resident of Village- Heru Diyara, P.S. Kasim Bazar, District- Munger.

... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home Department (Police Branch), Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Munger.
3. The Superintendent of Police, Munger.
4. The Superintendent, District Jail, Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-07-2017

Challenging the order dated 17.01.2017 passed by the State Government as contained in Annexure-2 detaining the petitioner for a period of one year with effect from 9th of January, 2017 under Sections 21(1) and 22 of the Bihar Control of Crimes Act, 1981, this petition has been filed under Articles 226 and 227 of the Constitution of India.

Petitioner was earlier detained under the same provision because of his various criminal activities and after detention, he was released on 07.04.2016. Thereafter on account of his involvement in Nayaramnagar (Safaiyasarai) P.S. Case No.90 of 2016 for offences



under Sections 384/386/34 of the Indian Penal Code, the impugned action has been taken.

Even though various grounds are raised challenging the detention order, the primary ground raised by the petitioner in the writ petition is that in the show cause notice issued to the petitioner, the reason for detention of the petitioner was his involvement in the 13 cases indicated in the show cause notice. It is pointed out that cases from serial no.1 to serial no.10 are for the period from 22.08.2002 to 01.01.2014 and they were cases for which the petitioner was already proceeded with, detained and thereafter having already undergone the detention, he was released on 07.04.2016. As far as the case at serial no.11 is concerned, it is said to have been registered on 15.05.2015, but on the said date, the petitioner was already under detention as he was released only on 07.04.2016. As far as the case at serial no.12 is concerned, it is stated that it was a family dispute for the offence indicated therein between the two brothers. In the supplementary affidavit filed, it is indicated that this case was compromised on 29.06.2016 by the parties. Accordingly, it is stated that the grounds for detention are not made out, on arbitrary and illegal consideration, the detention has been ordered and by placing reliance on various judgments of the Supreme Court and the High Court in the matter of preventive detention, the prayer made is that on the grounds canvassed,



the detention of the petitioner is unsustainable.

The respondents have filed a detailed reply and they say that after release on 07.04.2016, the petitioner again indulged in looting and arson in National High Way No.08 and because of this a case under Sections 384, 386 and 34 of the Indian Penal Code being Nayaramnagar (Safaisarai) P.S. Case No.90 of 2016 was registered against him on 19.06.2016 and, therefore, the action is taken. That apart, it is stated that Kotwali Police Station has already registered a case against him on 02.06.2016 being Kotwali Police Station Case No.147 of 2016 for offence under Section 115 of the Indian Penal Code and, therefore, the impugned action is said to be proper.

We have considered the contentions advanced and we have gone through the records and we find that for detaining the petitioner in 13 criminal cases in which the petitioner is involved are indicated as grounds for his detention. As far as case from serial No.1 to 10 to these 13 cases are concerned, they pertain from 22.08.2002 to 01.01.2014 and for these cases, the petitioner was already proceeded with and action was taken for detaining the petitioner for one year which ended on 07.04.2016. That being so, for these 10 cases, once the petitioner was already detained and have undergone one year period of detention, again action could not be taken. As far as the case at serial no.11 is concerned, it is said to be an offence under Sections 147, 148, 149,



341, 342, 363, 364 and 365 of the Indian Penal Code which was subsequently converted into under Section 302, 201 and 120B of the Indian Penal committed on 15.05.2015, but admittedly, on this date, the petitioner was undergoing the previous detention and there is nothing available on record as to how and on what basis, the petitioner could have committed this offence when he was only released from custody on 07.04.2016 and there was nothing to indicate that he was responsible for this offence after his release on 07.04.2016. This case could not be a ground for preventive detention, may be a good ground for criminal action against the petitioner under the criminal law.

As far as case at serial no.12 is concerned, it is a case of a family dispute registered on 19.06.2016 and the supplementary affidavit of the petitioner filed goes to show that this case has already been compromised and there is nothing available on record that because of this case, the public safety, law and order problem and normal public life in the area was disturbed.

As far as case at serial no.13 is concerned, it is an action taken under Section 115 of the Indian Penal Code and there is nothing to show what was the nature of offence committed by the petitioner, which resulted in disruption of public safety, public order and created public nuisance and disturbance in the area.

From the complete reading of the return filed, nothing was



brought to our notice which goes to show that after release on 07.04.2016, the petitioner created a situation which resulted in disruption of public life and peace necessitating passing of preventive detention order. In the order, it is only indicated that because of his involvement in criminal cases and the petitioner being a habitual offender, he has been detained under the preventive detention. In our view, the petitioner has already undergone custody under the preventive detention which ended on 07.04.2016 and after his release on 07.04.2016; there is no material available on record based on which the order of his further preventive detention could be passed.

Keeping in view the aforesaid, we find the action taken in the present case is contrary to the requirement of law and, therefore, we allow the petition, quash the impugned action and direct for release of the petitioner in case he is not required in any other case.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2017
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