

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2727 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District- Begusarai

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Raju Jha, son of Ashok Jha @ Ashok Kumar Mishra, Resident of Village-
Bishnupur, P.S.- Town, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna
2. The Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
3. The Additional Secretary, Department of Home (Police), Government of Bihar, Patna.
4. The Under Secretary, Department of Home (Police), Government of Bihar, Patna.
5. The District Magistrate, Begusarai.
6. The Superintendent of Special Central Jail, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Thakur, Advocate Mr.Md.Imteyaz Ahmad, Advocate Mr. Malay Kumar Choudhary, Advocate Mr. Ritwaj Raman, Advocate
For the S t a t e	:	Mr.P.N. Sharma, A.C. to A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 02-07-2019

The petitioner, who has been in custody since 13.11.2017 in connection with Bachhwara P.S. Case No.159/17 with regard to a case under the Arms Act, has preferred the present writ application seeking to set aside the order contained in Memo No.8094/Patna dated 13.09.2018,



issued by the Under Secretary, Department of Home (Police), Government of Bihar, by which he has been intimated of an order dated 16th of August, 2018, contained in Memo No.7269 issued by the State Government, by which the detention order has been issued against the petitioner under Section 21(1) read with Section 22 of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as 'the Act') and it was confirmed that he be detained in custody till 10.08.2019. The aforementioned order contained in Memo No.7269 dated 16.08.2018 seeks to confirm the order passed under Section 12(2) of the Act and the approval of the State Government under Section 12(3) of the Act, as contained in Memo No.1832/Legal dated 11.08.2018 passed by the District Magistrate, Begusarai, by which the petitioner has been ordered to be detained under Section 12(2) of the Act.

2. Learned counsel for the petitioner contended that the petitioner was taken into custody earlier in connection with Bachhwara P.S. Case No.159/17 on 13.11.2017. Soon thereafter, the District Magistrate, vide Memo No.1832 dated 11.08.2018, passed an order under Section 12(2) of the Act. In order to prevent him from acting in any manner prejudicial in maintaining public order, the petitioner was directed to be



detained immediately and on 11.08.2018 itself the grounds of detention were served on the petitioner, vide Memo No.1833/Legal dated 11.08.2018.

3. The petitioner responded to the aforementioned order by filing a representation dated 14.08.2018 to the State Government, but on 16.08.2018 itself, the petitioner was communicated with an order under Section 12(3) of the Act under the signature of the Under Secretary, Department of Home (Police), Government of Bihar, vide Memo No.7269 dated 16.08.2018.

4. Learned counsel for the petitioner submitted that the representation dated 14.08.2018 was delayed by the Superintendent, Central Jail, Bhagalpur, who forwarded the same on 26.08.2018 and the same was rejected mechanically by the authorities, communication whereof was made to the petitioner vide Memo No.7767 dated 06.09.2018. Soon thereafter on 13.09.2018, the petitioner was served with an order passed under Sections 21(1) and 22 of the Act, vide Memo No.8084 dated 13.09.2018, issued under the signature of the Under Secretary, Department of Home (Police), Government of Bihar, Patna, by which he was informed that the State Government has approved the detention of the



petitioner till 10.8.2019. It is under such circumstances that the petitioner has now preferred the present criminal writ application on the grounds which are set out herein under.

5. Learned counsel for the petitioner contended that the entire action initiated against the petitioner was unjustified in view of the fact that in most of the cases, which had formed the basis of the detention order, were such in which the petitioner had been made accused while he was in custody and therefore no presumption can be drawn that the release of the petitioner will adversely affect the public order. Learned counsel for the petitioner further asserted that the cases which have formed the basis of the opinion of the learned District Magistrate relate to nine cases and such cases cannot be said to be stale ground for passing an order under Section 12(2) of the Act. He further contended that Item No.(4) and Item No. (9) cannot form the basis of an order under Section 12 (2) of the Act. Furthermore, the decision taken by the District Magistrate that the learned District Magistrate was justified in saying that his release is prejudicial to the public order, which is wholly improbable. It was further contended by the learned counsel for the petitioner that none of the cases cited as grounds of detention would be said to be affecting the public



order and thus any order passed under Section 12(2) was with a view to prevent release of the petitioner as he had been granted bail in all other cases in which he was an accused. It was vehemently submitted that such detentions were wholly illegal and the rejection of the representation of the petitioner in a mechanical manner, amounted to adoption of a faulty procedure and moreover, in the wake of the fact that the petitioner was not permitted to defend himself either before the Advisory Board or at an appropriate stage. The entire order passed against him under the Act was vitiated as being violative of the principles of natural justice and is fit to be set aside. It was thus prayed that the impugned orders stand vitiated and deserve to be set aside as they have been occasioned on the basis of the presumptions and in order to frustrate the release of the petitioner who was granted bail in all the cases in which he was remanded after his arrest since 13.11.2017.

6. Just before the petitioner was to be released from custody, in order to frustrate the judicial order, the District Magistrate, vide Memo No.1832 dated 11.08.2018 (Annexure 3), passed an order under Section 12(2) of the Act in which he has mentioned that with a view to preventing him from acting



in any manner which would be prejudicial in maintaining public order, it was necessary to place the petitioner under detention, the said order dated 11.08.2018 passed under sub-section (2) of Section 12 of the Act was confirmed by the Under Secretary to the Government, in the Department of Home, vide Memo No.7269 dated 16.08.2018 (Annexure 2), and was further confirmed by the Government on the opinion expressed by the Advisory Board, High Court, Patna, which has held that sufficient cause existed for the detention of the petitioner and ordered him to remain in custody till 10.08.2019.

7. Learned counsel for the petitioner contended that the petitioner was served with grounds of detention along with the order by which he had been placed under detention by the authorities vide Annexure 4 and a perusal thereof clearly indicated that by way of criminal history, the District Magistrate had enumerated nine cases whereof serial nos. 4 and 9 cannot be taken as criminal history and similar was the situation with regard to Town P.S. Case No.94/18 which had been purposefully dated to be 11.08.2018 instead of 11.02.2018. It was further submitted that three other cases also related to such occurrences which had taken place while



the petitioner was in custody whereas in other cases enumerated in the letter were such in which the petitioner was not named in the First Information Report and therefore, this fact itself indicated that the respondent-District Magistrate had acted in an altogether mechanical manner while passing the order under Section 12(2) of the Act.

8. Learned counsel for the petitioner further submitted that the petitioner filed his representation immediately on 14.08.2018 to the State Government which was sent through the Superintendent, Central Jail, Bhagalpur, but for reasons best known to him, the said representation was delayed at the level of Superintendent, Central Jail, Bhagalpur and was sent to the State Government on 26.08.2018. As such, the State Government without considering the said representation and without placing the same before the Advisory Board rejected his application on the basis of the opinion of the Advisory Board, which was communicated to the petitioner, vide Memo No.7767 dated 06.09.2018. The aforesaid rejection order was followed by order under Section 21(1) and 22 of the Act, vide Memo No.8094 dated 13.09.2018, by which the petitioner was informed that the State Government had approved the detention of the petitioner



till 10.08.2019. It is in the wake of arbitrary executive action that the petitioner has challenged the order of detention claiming that the passing of such orders amounts to defeating the cause of justice and has been occasioned for circumventing the order of bail passed by the courts. It was alleged that the District Magistrate as well as the State Government have arbitrarily invoked the power under the Act to deprive the petitioner of his liberty and the alleged grounds of detention have no concern with public order. It was thus prayed that the impugned orders passed under Section 12(2) which was ultimately followed by order passed under Sections 21 and 22 of the Act stood vitiated and was fit to be set aside.

9. A counter affidavit has been filed on behalf of the State of Bihar in the Department of Home, wherein it has been asserted that the detention order contained in Memo No.1832/Legal dated 11.08.2018 passed by the District Magistrate, Begusarai against the petitioner under Section 12(2) of the Act was necessitated on the basis of criminal cases of serious nature and the ground was served on him through the Superintendent of Special Central Jail, Bhagalpur on 12.08.2018. It was further averred by the respondents that the petitioner is an anti-social element and has been a habitual



offender committing crime of serious nature and since he was expected to be released on bail, it was considered necessary to detain him further with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The said order was approved by the Home Department under Section 12(3) of the Act. The petitioner was also permitted to represent against the aforementioned order which was sent by him through the Superintendent of Central Jail, Bhagalpur, vide his Letter No.4435 dated 26.08.2018. The State Government on receipt of such representation filed by the petitioner, which was received in the Department of Home on 27.08.2018, asked for the comments from the D.M., Begusarai on the said representation and his opinion was received in the Department on 28.08.2018, vide Letter No.1952 dated 27.08.2018. At para 10 of the counter affidavit it has been clearly averred that the representation of the petitioner has been thoroughly examined by the State Government at different levels (Section on 28.08.2018, S.O. on 28.08.2018, Under Secretary on 28.08.2018, Joint Secretary on 29.08.2018, Principal Secretary on 29.08.2018) and approved by the Hon'ble Chief (Home) Minister on 05.09.2018 and pleased to reject the representation of the petitioner on



05.09.2018 and communicated to the petitioner, vide Home Department (Police Branch) Memo No.7767 dated 06.09.2018.

10. Consequent to the approval of the State Government under Section 12(3) of the Act, the matter was referred to the Advisory Board under Section 19 of the Act, vide Home Department (Police Branch) Letter No.7498 dated 27.08.2018. The meeting of the Advisory Board was held on 07.09.2018 and the Advisory Board, Patna High Court, Patna heard the petitioner in person and he was given full opportunity to represent and explain his defence to prove himself to be innocent. The opinion of the Advisory Board was received in the Department on 10.09.2018. The Board opined that sufficient grounds existed for detention of the petitioner under the Act and accordingly the detention order of the petitioner was confirmed under Section 21(1) and 22 of the Act with a direction to detain the petitioner in jail for a maximum period of 12 months from the date of 11.08.2018 (date of issuance of detention order passed by the D.M., Begusarai) to 10.08.2019, vide Home Department (Police Branch) Order No.8094 dated 13.09.2018. It was thus submitted that the entire case of the writ petitioner is



misconceived and he has no valid and legal ground to seek his release, especially in view of criminal history indicated in the charge memo and the opinion of the Advisory Board which was after due hearing to the petitioner.

11. We have heard Shri Ajay Kumar Thakur, learned counsel for the petitioner and Shri Prabhu Narain Sharma, learned Assistant Counsel to Advocate General appearing on behalf of the State and also examined the materials available on record. A perusal of the charge memo clearly indicates that the petitioner was having a definite criminal history wherein his name has surfaced in connection with several crimes of his area and therefore the S.P., vide his letter No.7003 dated 08.08.2018, addressed to the District Magistrate, Begusarai, had given a proposal to him to proceed under Section 12(2) of the Act. It was with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and in view of the past activities of anti-social nature that the aforementioned recommendations, the grounds which would form the basis of his detention. It was contended in the letter of the S.P. that the petitioner even while being in custody had been engaging and disturbing public peace in the town region of Begusarai and that he was a habitual offender



for which several informatory petitions had also come on record. It was in the wake of the detailed report sent by the S.P. that the recommendation for proceeding under Section 12(2) had been made to the District Magistrate and which had ultimately resulted in detention order.

12. We have examined in detail the allegations made against the petitioner and also considered the legal procedure adopted by the authorities, violation of which has been made a ground for seeking release of the petitioner.

13. So far as the delay in forwarding the representation of the petitioner is concerned, it appears that the same was received by the Home Department, but it cannot be said that the same was not given due consideration before the matter was put up before the Advisory Board. Moreover, it is amply clear that the Advisory Board had duly heard the petitioner in person before expressing its opinion and directing the detention of the petitioner under the Act. There is therefore no prejudice caused as a delay by itself may not be a ground of potential challenge. The petitioner is in custody since 13.11.2017 and it is the contention on his behalf that the three cases thereafter which were registered is in relation to occurrences when the petitioner was in custody. In this



respect, the detail report and the satisfaction recorded by the District Magistrate in this regard in respect of all the three incidents is categorical and is based on relevant material connected with the conduct of the petitioner. Consequently the order cannot be termed to be malicious or otherwise invalid on any legal count.

14. Learned Counsel for the petitioner, Sri Thakur has urged that no satisfactory explanation has been given for the delay caused and in support of his contention he relies on the judgment in the case of **Sama Aruna vs. State of Telangana and Anr.** reported in **AIR 2017 SC 2662**. He has also invited the attention of the Court to the assertion in the petition that the petitioner filed the representation on 14.08.2018 and the representation was sent by the Superintendent, Central Jail on 26.08.2018 thereby delaying the process. It has also been alleged that without appreciating the said representation the State Government rejected the request for release on 06.09.2018.

15. Paragraph 8 of the counter affidavit in response thereto refers to the receipt of the representation by the State Government on 27.08.2018 on which the comments of the District Magistrate were obtained and in paragraph 10 of the



counter affidavit it has been categorically stated that the said representation was thoroughly examined whereafter the rejection order was passed. It was thereafter that the matter was referred to the Advisory Board which confirmed the said order. On the facts of the present case, the representation, a copy whereof has been filed along with the counter affidavit does not indicate the endorsement of the date as 14.08.2018 as alleged by the petitioner. The representation has been endorsed and certified by the Assistant Superintendent, Central Jail, Bhagalpur on 26.08.2018. The said representation was dispatched to the State Government on the same day and was received by the State Government.

16. We, therefore, do not find any delay on the part of the authorities having been established and even otherwise as noted above no prejudice has been caused to the petitioner. The judgments cited at the bar by the learned counsel for the petitioner, therefore, do not come to his aid and the law has come to be further explained by the Apex Court in the case of **Hetchin Haokip vs. State of Manipur & Ors.** reported in **(2018) 9 SCC 562**. There is nothing on record to demonstrate any administrative laxity or deliberate delay on the part of administration to dispatch the representation which appears to



have been sent within reasonable time so as to have caused any prejudice to the petitioner.

17. The details of the criminal history have been enumerated in the charge memo and the details as incorporated in the report of the S.P. wholly dissuade us from interfering with the order passed by the State Government. We further find that the period of detention is also now culminating as the order will lose its effect by efflux of time on 10.08.2019 and in view of the fact that we have not found any procedural irregularities in the orders impugned and in the wake of criminal history detailed in the charge memo, which stand fully supported by relevant material facts, we are of the considered opinion that the orders do not call for any judicial review.

18. The writ application is thus dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Vikas

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	06.07.2019
Transmission Date	

