

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1614 of 2023

Arising Out of PS. Case No.-247 Year-2022 Thana- IMAMGANJ District- Gaya

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SHANE ALI KHAN S/O LATE MOINUL ABDIN @ JANGALI KHAN R/O
VILLAGE- KOTHI, P.S- KOTHI, DISTT.- GAYA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE HOME SECRETARY, GOVT. OF BIHAR, PATNA. BIHAR
2. THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA. BIHAR
3. THE INSPECTOR GENERAL, MAGADH RANGE, GAYA BIHAR
4. THE DISTRICT MAGISTRATE, GAYA. BIHAR
5. THE SENIOR SUPERINTENDENT OF POLICE, GAYA. BIHAR
6. THE JAIL SUPERINTENDENT, CENTRAL JAIL, GAYA. BIHAR

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Manish Kumar, Advocate
For the State	:	Mr. Deepak Kumar, AC to GP4

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 06-11-2023 Heard Mr. Manish Kumar, learned counsel for the petitioner and Mr. Deepak Kumar, learned AC to GP4 for the State.

2. Learned counsel for the petitioner submits that by way of filing the present petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 24.07.2023, passed by the respondent-District Magistrate, Gaya under the provisions of Bihar Control of Crimes Act, 1981 (hereinafter referred to as ‘the Act’). It is further submitted that



while passing the said order, the respondent authority has not followed the procedure prescribed under Section 3 of the said Act and the opportunity of hearing was not afforded to the petitioner. No notice was issued to the petitioner before passing the order under Section 12 of the Act. It is further submitted that even at the time of passing the impugned order on 24.07.2023, the respondent authority has not specifically stated about the period for detention. Learned counsel referred the provisions contained in Section 12 of the Act and submitted that for the initial period of 90 days, the State Government can pass the order of detention and thereafter the same can be extended from time to time. In the present case, while passing the impugned order, the respondent-District Magistrate has not specifically stated about the period for which the impugned order has been passed. Learned counsel, therefore, urged that the impugned order be quashed and set aside.

3. On the other hand, learned counsel for the respondent authorities has opposed this petition and referred the averments made in the reply filed on behalf of the concerned respondent authority. It is pointed out by the learned counsel for the respondents that though the impugned order has been passed under Section 12 of the Act on 24.07.2023 by the District



Magistrate, Gaya, the same was not approved by the State Government. Thereafter the District Magistrate, Gaya has passed fresh order under Section 12 of the Act on 12th of August, 2023. The said order has been served to the petitioner. Learned counsel for the respondents has referred the said order, copy of which is placed along with the reply filed on behalf of the respondent. Learned counsel has also pointed out the thumb impression given by the petitioner at the time of receiving the copy of order of detention. Learned counsel for the respondents, therefore, urged that the present petition has become infructuous in view of the subsequent development which has taken place. It is also contended that it is always open for the petitioner to challenge the order dated 12th of August, 2023 passed by the respondent authority on the grounds available to the petitioner. It is also pointed out by the learned counsel for the respondents that after passing of the order dated 12th of August, 2023, the present petition has been filed on 29.08.2023, challenging the order dated 24.07.2023 by not pointing out correct details.

4. We have considered the submissions canvassed by learned counsel for the parties. From the record, it would emerge that the petitioner has challenged the order dated 24.07.2023, passed by the respondent-District Magistrate, Gaya



under Section 12 of the Act. However, it would further emerge from the record that the said order dated 24.07.2023 has not been approved by the State Government. Further it transpires from the record that the respondent-District Magistrate once again, while exercising powers under Section 12 of the Act, has passed the order against the petitioner on 12th of August, 2023. We are, therefore, of the view that as the order dated 24.07.2023 has not been approved by the State Government and thereafter another order dated 12.08.2023 has been passed by respondent, this petition has become infructuous. Accordingly, the same is disposed of.

5. However it is clarified that, we have not examined the correctness of the order dated 12th of August, 2023 as it is not under challenge in this petition, and it is always open for the petitioner to challenge the order dated 12th of August, 2023, passed by the respondent-District Magistrate on the grounds available to the petitioner.

(Vipul M. Pancholi, J.)

(Rudra Prakash Mishra, J.)

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