

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.255 of 2024

Arising Out of PS. Case No.-424 Year-2013 Thana- SAHARSA SADAR District- Saharsa

Md. Shamsher @ Mintu @ Mir Shamasher Alam son of Mir Quddus Village-
Saharsa Basti, Ward No-38, P.S. and Dist.- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs Bihar, Patna
2. The District Magistrate, Saharsa Bihar
3. The Superintendent of Police, Saharsa Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Diwakar Singh, Advocate
For the Respondent/s : Ms.Shama Sinha, SC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2024

In the instant petition, petitioner has prayed for the following reliefs:-

"(i). That for issuance of writ/writs, order/orders or direction/directions be issued to commanding the respondent or writ of Certiorari quashing the Memo No. 640 dated 01.09.23 Communicating order dated 26.08.23 passed by District Magistrate Saharsa (Annexure- 3) by which the petitioner was directed to be fugitive for six months & further directed to mark his attendance in Police Station Supaul under District Supaul, on every day in the morning between 09:00-11:00



AM & in the Evening between 05:00-08:00 PM. The District Magistrate Supaul, Superintendent of Police, Supaul & Saharsa as well as officer-in-charge Supaul Police Station was directed to make compliance of order/direction passed by Respondent No.2 & further District Public Relation Officer Saharsa was directed to circulate the message on web site of District.

(ii) That for issuance of writ/writs order/orders or direction/directions be issued commanding respondent District Magistrate Saharsa & superintendent of Police at Saharsa not to harass the petitioner taking shelter of Crime Control Act since the are poor business man working as electrician for his livelihood as such declaring the petitioner Fugitive & Terming him as "CRIMINAL" in impugned order seriously offends fundamental right of the petitioner as such direction be given that Memo No. 640 dated 01.09.23 (Annexure-3) is illegal & arbitrary exercise of power by which the petitioner was declared Fugitive & Termed as "CRIMINAL" since the petitioner is not convicted in any kind of offence as such the term Criminal or 'Aparadhkarm' is wholly against Article 20 of Constitution of India.

(iii) That any other relief or reliefs for which the petitioner be found entitled in law be granted to them."

2. The petitioner is alleged to have involved in three criminal cases which are narrated in Annexure-P3 dated 26.08.2023. The respondents have filed counter affidavit along



with documents. We have perused Annexure- A series. There is no iota of latest material evidence to the extent that petitioner is a threat to the society as on 26.08.2023, the date on which Superintendent of Police, Saharsa recommended for invoking the provision of Bihar Control of Crimes Act, 1981. Recommendation of the Superintendent of Police, Saharsa dated 28.03.2023 vide Annexure- R/A filed along with the counter affidavit is very vague. In the absence of any threat to the society on behalf of the petitioner with reference to any incident in the year, 2023 read with the fact that petitioner was involved in three criminal proceedings. One cannot draw inference that there is an immediate threat to the society on behalf of the petitioner so as to invoke Section 3(3) of Bihar Control of Crimes Act, 1981. The petitioner has made out a case so as to interfere with the order dated 26.08.2023 *vide* Annexure- P/3 and it is set aside. Accordingly, the present criminal writ petition stands allowed.

3. The present order would not be a hurdle for the concerned authority in the event of any recent or a fresh threat on behalf of the petitioner which causes threat to law and order in the society. In that event concerned authorities are at liberty to invoke the aforementioned provision of law and in accordance with law



while passing speaking order of recommendation and so also a speaking order, if it, is warranted.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

asmit/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

