

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1667 of 2025

Arising Out of PS. Case No.- Year-0 Thana- District- Saharsa

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Rakesh Kumar Yadav @ Rakesh Yadav, S/o Sikandar Prasad Yadav, R/o
Nayatola Birgaon ward no. 10, P.S.- Mahishi (Jalai) and Distt.- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Deptt. of Home affairs
Bihar, Patna
2. Director General of Police, Bihar Patna
3. District Magistrate Saharsa Bihar
4. Superintendent of Police, Saharsa Bihar
5. Officer-in-Charge Jalai Police Station, Distt.- Saharsa Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, S.C.-9
		Ms. Vagishal Pragya, Advocate
		Ms. Sushmita Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 03-12-2025

Heard learned counsel for the petitioner and
learned SC-9 for the State.

2. The District Magistrate, Saharsa has appeared
through video conferencing and we have interacted with him.

3. This writ application was taken up for
consideration yesterday. After hearing learned counsel for the
petitioner and the State, we have recorded our prima-facie view
in the order dated 02.12.2025. The said order is being



reproduced hereunder for a ready reference:-

“Heard learned counsel for the petitioner and learned AC to SC-9 for the State.

2. Learned counsel for the petitioner submits that the District Magistrate, Saharsa (Respondent No. 3) passed the impugned order as contained in Memo No. 465 dated 20.05.2025 without considering the show cause (Annexure ‘P/2’). In his show cause, the petitioner had explained that there were two cases against him. In the first case being Mahishi P.S. Case No. 70 of 2023 dated 31.03.2023 under Sections 420, 467, 468, 471 of the Indian Penal Code and Sections 30(a), 41, 47 of the Bihar Prohibition and Excise Act, the petitioner was falsely implicated as the liquor was found from a lonely place. In this case, the Hon’ble High Court had been pleased to grant anticipatory bail to the petitioner vide Criminal Miscellaneous No. 39852 of 2023 on 30.10.2023. In the second case being Mahishi P.S. Case No. 284 of 2024 under Sections 223, 292, 296, 3(5) of the Bhartiya Nyay Sanhita, the allegation was that a programme of Orchestra was organized in a government school campus.

3. Learned counsel submits that Section 3 of the Bihar Control of Crimes Act, 2024 (in short ‘BCC Act’) empowers a District Magistrate to pass an order in terms of sub-section 3(a) and sub-section 3(b) of Section 3 of the BCC Act. The twin conditions mentioned under sub-section (1) of Section 3 of the BCC Act are required to be fulfilled before passing an order in terms of sub-section (3) of Section 3 of the BCC Act. His submission is that against the petitioner, there was no material before the District Magistrate



to take a view that he was causing or was likely to cause any danger or harm to any person or property and that his activities cannot be prevented without removing him from the specified place or places. His submission is that at the instance of some local rivals and in the village politics, a report was sent to the District Magistrate through the Officer-in-Charge, Jalai and Sub-Divisional Police Officer, Sadar, Saharsa.

4. Learned counsel submits that the District Magistrate, Saharsa not only passed an order for externment of the petitioner outside the jurisdiction of the Jalai Police Station to Basnahi Police Station in the district of Saharsa, he also ordered in the same breath that the petitioner shall physically appear in Basnahi Police Station every day from 09:00 AM to 11:00 AM and from 05:00 PM to 08:00 PM. It is submitted that the kind of order passed by the District Magistrate is not in accordance with law and this is nothing but causing immense hardship to the petitioner and in the condition of this kind of order, the petitioner had to, in fact, travel every day 60 kilometers from his ordinary place of residence to Basnahi Police Station. The distance was about 60 kilometers from one side. By passing such order, the petitioner who was having a kirana shop was not able to run his shop and thereby, he was rendered helpless in earning his livelihood.

5. A counter affidavit has been filed on behalf of the State. The stand of the State is that the petitioner was engaged in carrying illegal activities and the local people had been feeling some threat, therefore, the police acted lawfully for resorting the confidence among the villagers. It is contended that the District Magistrate, Saharsa has passed the impugned



order only after hearing the petitioner, therefore, the impugned order does not suffer from any illegality or infirmity. The order is also based on the proposal submitted by the Sub-Divisional Police Officer, Saharsa.

6. Having heard learned counsel for the petitioner and learned AC to SC-9 for the State as also on perusal of the records, we have noticed that in the impugned order, two cases have been referred to in which the petitioner is said to be an accused. The order nowhere shows that the petitioner had done any such act which was likely to cause threat and havoc to the people at large. However, at this stage, since the two months' period for which the externment order was passed has elapsed, we are not going into that issue leaving it open for consideration in an appropriate case. What is disturbing in this order is that part of the direction of the District Magistrate, Saharsa by which he asked the petitioner to be physically present in Basnahi Police Station every day from 09:00 AM to 11:00 AM and from 05:00 PM to 08:00 PM.

7. In fact, we have noticed recently that this trend has developed and orders are being passed by the District Magistrates causing such hardships to the person which would be a kind of punishment for him both physically and monetarily. If a person is asked to make his attendance every day in the police station twice from 09:00 AM to 11:00 AM and then from 05:00 PM to 08:00 PM, he would not be able to do any work. He cannot seek even a part-time employment for himself and such orders have virtually an effect of interfering with his Right to Life guaranteed under Article 21 of the Constitution of India without following the established procedure of



law. Order of externment is one thing but then asking the person to mark his attendance every day twice in the police station is quite different and distinct. This has an element of arbitrariness and by no stretch of imagination, such order may be said to be a reasonable one. Relevance and reasons are the twin principles of our Constitution which are required to be followed in every decision made. On this score, we find that the District Magistrate, Saharsa, by passing the impugned order directing the petitioner to mark his attendance every day twice in the police station which was at a distance of 60 kilometers from his residence, has caused immense hardship to him and in the garb of exercise of his power, he may be held liable for misuse of his power or excessive use of power.

8. In the given circumstances, we propose to not only set aside that part of the order by which the petitioner was asked to mark his attendance twice in the police station, we also propose to award cost to the petitioner which would be liable to be realized from the District Magistrate, Saharsa.

9. Let the District Magistrate, Saharsa appear tomorrow in person through online mode to answer the queries of the Court as also as to why he should not be ordered to pay the cost.

10. List this case tomorrow i.e. on 03.12.2025.”

4. Today when the hearing started, Mr. Kinkar Kumar, learned SC-9 initially submitted before us that in terms of sub-section (3) of Section 3 of the BCC Act, 2024, the District Magistrate is competent to pass an order in writing



directing the person to remove himself outside the District or part thereof, or any part of the State as the case may be, by such route, if any and within such time as may be specified in the order and to resist from entering the district or the specified part thereof or of the State until the expiry of such period, not exceeding six months, as may be specified in the order.

5. This court called upon learned SC-9 to have a glance over the case registered against the petitioner in the year 2024. The case is registered under Sections 233, 292, 296 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 and the allegations against him was that a program of orchestra was organized in the government school campus.

6. Learned SC-9 does not dispute the factual position that in the first case, which was registered against the petitioner, he was granted anticipatory bail by the High Court on 30.10.2023 and thereafter there was no instance of his involvement in any offence of like nature. Learned SC-9 has accepted at the bar that so far as the second case is concerned, it was not in the nature of causing or likely to cause any danger or harm to the person or property of any person or the State.

7. Admittedly, the offences alleged are punishable by payment of fine to a maximum amount of Rs.1,000/- and



one of the offences is punishable by imprisonment for a period of six months.

8. We, therefore, find that the conditions as contained in clause (b)(i)(ii) of sub-section (1) of Section 3 of the BCC Act were not present in this case when the District Magistrate passed the impugned order.

9. Be that as it may, since the order has already taken effect and the petitioner has been made to attend the police station twice in a day, we are focusing on the issue as to whether the District Magistrate would have lawfully passed such an order directing the petitioner to mark his attendance in the police station twice from 09:00 to 11:00 A.M. and then from 05:00 to 08:00 P.M. that too in the police station which was situated at a distance of 60 kms. from his residence.

10. We appreciate that learned SC-9 has himself placed before this Court Rule-6 of the Bihar Control of Crime Rules 1978, which reads as under:

“6. While making an order under sub-section (3) of section 3 the District Magistrate may ordinarily require or direct the person affected by the order

(a) to notify his movements to Officer-in-charge of the Police Station (whether in the same district or any other



district within or outside Bihar State) nearest to his residence for the time being or to report himself to the said officer at such time and place as may be directed by such officer but not more than once in a day;

(b) to observe the prohibition or restriction about possession or use by him of any Lathi, fire-arm, sharp-edged weapon, any intoxicant, liquor, opium, Ganja, Charas or Bhang;

(c) not to be present within a specified distance from any specific educational institution, religious place, Mela Hat-Bazar, Cinema house or place of public entertainments such as public parks, restaurants and hotels, or around any public office on pay days;

(d) in case the Anti-social element removes himself outside Bihar also to inform the District Magistrate who made the order of his address at fortnightly intervals.”

11. Learned SC-9 has admitted at the bar that in terms of this Rule-6 the petitioner could have been asked to mark his attendance in the police station only once in a day.

12. The District Magistrate, Saharsa, submits that he had joined in the District of Saharsa after the impugned order was passed by his predecessor, but henceforth he will take care and such kind of order shall not be passed.



13. In the kind of facts emerging before the Court, this Court being a constitutional court under obligation to protect the fundamental rights of the citizens cannot remain a silent and mute spectator where the life and liberty of a citizen are curtailed without following the established procedure of law. It is evident from the facts of this case that at first instance, the District Magistrate, Saharsa completely erred in taking view that the conditions prescribed under sub-section (1) of Section 3 particularly clause (b) thereof are present, so as to pass an order in terms of sub-section (3) of Section 3 of the BCC Act. Not only that the District Magistrate in his endeavour to pass the strictest kind of order, not only directed for externment of the petitioner outside the jurisdiction of the police station but also directed him to mark his attendance twice every day in Basnahi police station between 09:00 to 11:00 A.M.; and 05:00 to 08:00 P.M.

14. The impugned order suffered from the principle of proportionality. It also rendered itself illegal being contrary to the mandate of Rule 6 of the Rules, which specifically said that the person shall not be ordered to make attendance more than once in a day. The negative covenant of Rule 6 could not have been violated by the District Magistrate in exercise of his



power under sub-section (3) of Section 3 of the BCC Act.

15. We have recorded in our earlier order and reiterated here that recently this Court has come across several such orders wherein persons against whom order is passed under Section 3 of the BCC Act, has been directed to mark his attendance sometimes at a distance of 100 kms from his original place of residence. The rule clearly says that such attendance is to be marked in the nearest police station but this rule is being violated with impunity.

16. Since we are of the considered opinion that the petitioner's liberty was curtailed illegally by violating the Rules and the petitioner had to suffer the hardships for continuous two months, we direct the State Government to pay a compensation of Rs.1,00,000/- to the petitioner with cost of litigation assessed at Rs.10,000/-. The entire amount shall be paid within a period of one month from today.

17. Keeping in view the principle that if State is saddled with cost and compensation due to misuse or excessive use of power by an executive of the State, it is open to the State to realize the compensation and the cost amount awarded by this Court from the erring officials, we direct the State Government to realise this amount from the erring officials in



accordance with law. In this regard we refer the judgment in the case of *K.K. Pathak @ Keshav Kumar Pathak Vs. Ravi Shankar Prasad and Others* reported in *2019 (1) PLJR 1051*. A challenge to the said judgment in S.L.P. (Cri) No. 003566/2019 before the Hon’ble Surpeme Court failed.

18. We have awarded the compensation in the lower side keeping in view the request of learned SC-9 for the State.

19. The Principal Secretary, Department of Home Affairs Bihar, Patna shall bring this judgment to the notice of all the District Magistrate in the State of Bihar.

20. The writ application is disposed off.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.12.2025
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