

Mithilesh Kumar Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-28-1997

Judge : Prasun Kumar Deb, J.

Appeal No. : Criminal Writ Jurisdiction Case No. 47 of 1997 (R)

Appellant : Mithilesh Kumar Singh

Respondent : The State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : Prasun Kumar Deb, J. 1. In this writ application prayer has been made for direction for quashing the order of detention passed by the District Magistrate i.e. Respondent No. 2 dated 18.12.1996 under Section 12(2) of the Bihar Control of Crimes Act, 1981, as contained in Annexure 1 and the subsequent orders of approval of detention dated 28.12.1996 and confirmation of the State Government dated 25.2.1997. 2. According to the petitioner, while he was in custody was served with detention order da

Judgement :

Prasun Kumar Deb, J.

1. In this writ application prayer has been made for direction for quashing the order of detention passed by the District Magistrate i.e. Respondent No. 2 dated

18.12.1996 under Section 12(2) of the Bihar Control of Crimes Act, 1981, as contained in Annexure 1 and the subsequent orders of approval of detention dated 28.12.1996 and confirmation of the State Government dated 25.2.1997.

2. According to the petitioner, while he was in custody was served with detention order dated 18.12.1996 on 19.12.1996 by Respondent No. 2. Then he had also been served with the grounds of detention on 20.12.1996 with the documents contained therein. According to the petitioner, he was served with a copy of the documents which were not legible and, as such, he had made request for serving legible copy of the documents. Then order dated 30.12.1996 was passed approving the order of detention by Respondent No. 4 dated 28.12.1996 which is contained in Annexure-2. On 3.1.1997, the petitioner filed representation as contained in Annexure 3. On 29.1.1997 the petitioner was informed that his representation has been rejected which has been contained in Annexure-4. Confirmation order by the State Government dated 25.2.1997 was served on the petitioner on 1.3.1997 which is contained in Annexure-5.

3. In this writ petition, challenge of the detention has been made on the following grounds:

That there, was delay in presentation of the petitioner before the Advisory Board and without his production, the Advisory Board recommended the rejection of representation and the State Government without going through the representation itself only ditto the Advisory Board's report and confirmed the detention order.

4. The second ground is that the petitioner has been served with illegible copy of the detention order and the grounds and the documents thereof and the petitioner made endorsement on the body of those papers that those were illegible which had caused prejudice to the petitioner in filing his proper representation.

5. The last and the vital ground pressed is that the detention order has been passed on the basis of the stale matter as the cases referred to against the petitioner were six to eight months old and those cases were of individualistic character having only law and order problem for the law enforcing authorities but have got no nexus with the public, order.

6. Mr. Ram Balak Mahto being assisted by Mr. Praveen Shanker Dayal has not much pressed. on the point of representation being dealt. As per the Act itself, it is the duty of the authorities to dispatch the representation to the Advisory Board and it is the Advisory Board's concern when it would be available for the purpose of consideration and that is not within the power and jurisdiction to commit the Advisory Board to sit on a particular date. In that view of the matter, it cannot be said that the representation had not been despatched or forwarded to the State Government belatedly because the word 'forward' had been mentioned in the Act itself and not placing before the Advisory Board. This point has also not been pressed. In the writ petition itself, it has been contended that the petitioner alongwith the representation was not forwarded before the Advisory Board. There is no provision that the petitioner should also be physically produced before the Advisory Board, hence, this contention has got no force.

7. On the second point, it has been urged that the petitioner did not get proper scope to represent as the papers alongwith the detention order served on the petitioner were illegible and there was an endorsement to that effect by the petitioner an Annexure 1/1 itself. But it appears and has been pointed out by Mr. P.D. Agarwal, learned Government Advocate appearing for and on behalf of the respondents, who had also filed counter-affidavit in the case, justifying the detention order that the papers relating to detention were supplied to the petitioner not only in Hindi but also in English and as regards Hindi portion there is allegation of illegibility but regarding the English version of the papers, there is no such endorsement. Some illegibility is there regarding the Hindi papers supplied to the detenu but the English version was totally clear. On Hindi version also, if the mind is applied properly then those can be read without much difficulty. In that view of the matter, on the ground of illegibility of the detention order alongwith the grounds of the papers supplied to the detenu has got no much force. In the representation itself, there was no much pressing ground regarding the illegibility or otherwise of the papers and documents supplied to the detenu.

8. Much stress has been given on the third point regarding the grounds of detention. According to the learned Counsel for the detenu, the grounds were stale and as such no action should have been taken on it. It must be mentioned here

that there were four grounds mentioned for the purpose of detention but in the background history, it was also mentioned about nine other cases against the petitioner. It is stated that in those cases where there is back ground story, the detenu had been either acquitted or in one or two cases pendency is still there because of the laches on the part of the Investigation Agency or because of the Trial court Those matters will be referred to at the time of discussion of the individual cases.

9. The main grounds of detention are (i) Giddi P.S. Case No. 16 of 1996 of an occurrence dated 6.4.1996. In that case, first information report was lodged by one Ramesh Kumar Pandey, resident of Adarsh Colony Ranchi Road, Ramgarh and serving as Field Supervisor in the Rungta Project Ltd. It was alleged that on the date of occurrence, the detenu Mithilesh Kumar Singh alongwith other persons stopped 52 trucks and restrained the drivers forcibly on the pretext of political demonstration, the owner Hosir Mian, staff of the trucks were beaten up, window glass of some other trucks were also damaged. Because of the criminal activity of the detenu, his followers and associates, the vehicular traffic was then paralysed and the normal life of the general public was disrupted for a long duration. In course of investigation, it could be found that for committing rioting, unlawful assembly was made. The witnesses were very much scarred of the detenu and they were not opening up mouth about the incident but by long efforts of the police, some of them deposed and a prima facie case was found against the petitioner detenu and several other accused persons and hence charge-sheet was submitted.

(ii) In Giddi P.S. Case No. 20 of 1996, the occurrence was alleged to have committed on 31.4.1996 by the petitioner and several other person and the petitioner was the leader in committing the offence. Information was lodged by one Md. Mustaffa s/o. Md. Imam and it was alleged that on the date of occurrence in the noon hours, when the complainant after unloading, the truck was inspecting the tyre etc., of the truck, the detent alongwith other associates suddenly came in front of the complainant truck riding on a motor cycle and one of them had thrown a bomb on the complainant. He and his cleaner Ranjit Singh sustained bomb injuries seriously. It was further alleged that the said incident occurred in

pursuance of a secret conspiracy being made by the detenu Mithilesh Kumar Singh is Denkabera forest two-three days prior to the occurrence. The dispute was between the Truck Owner's Association and a banned organization of M.C.C. faction of the Bihar Motor Transport Karamchari Mahasangh led by the detenu Mithilesh Kumar Singh. Such occurrence took place due to their inability and their demand of Rangdari and squeezing of money from the truck owners and the drivers who had not been abide by the demand of the detenu. On investigation, charge-sheet was submitted against the detenu and others under Section 307/120B of the Indian Penal Code read with Section 3/4 of the Explosive Substance Act.

(iii) In Giddi P.S. Case No. 22 of 1996, charge-sheet was submitted against the detenu and several others under Sections 147, 148, 149, 34, 427, 337, 324, 307 and 120B of the Indian Penal Code read with Section 3 and 4 of the Explosive Substance Act. The complaint was filed by M. Idrish, the driver of a Dumper of Rungta Project Limited. It was alleged that on the date of occurrence in the noon hours while the complainant dumper along with the dumpers of the Company were going towards Gid Washery to unload the coal, suddenly the detenu along with his associates appeared being armed with bomb and deadly weapons and stopped and threatened all the vehicles. The drivers were asked to get down but when the complainant's driver resorted to run his vehicle to save his life, a bomb was thrown upon the dumper as a result of which the dumper was damaged the complainant sustained bomb injuries. Some other drivers of the other dumpers had also sustained injuries because of throwing of bomb pelting of stones. The detenu and his associates stopped the vehicle for long time, traffic and normal public life was paralysed. People in the near area became terror-stricken because of that incident as it was occurred the secret conspiracy of the detenu which was done some days prior to the incident. The incident occurred due to not coming into the fold money claim made by the so-called Association led by the detenu. After investigation, the police submitted charge-sheet as mentioned above.

(iv) In Giddi P.S. Case No. 24 of 1996, charge-sheet has been submitted against the detenu under Sections 341, 323, 427, 120B of the Indian Penal Code. The occurrence took place on 1.6.1996. The complainant was one Ravindra Prasad

Sharma, a staff of Rungta Project Limited. According to the complainant, on 31.5.1996, at about ten hours, he went to supervise the loading of coal to Washery of Giddi and at that time, he saw several vehicles and dumpers approaching the place of occurrence but suddenly the petitioner-detenu alongwith other associates appeared, stopped the vehicles, the dumper drivers were attacked and they fled away to save their lives leaving the vehicles. The dumper drivers Dwarika Singh and Balwant Nath Singh were seriously injured.

10. These are the grounds for which the detention order has been passed but in the grounds itself it has been mentioned that besides the above four heinous cases, nine station diary entries had also been made against the detenu Mithilesh Kumar Singh in the year 1996 itself which clearly shows his tendency, of making conspiracy of criminal acts and of abetting the same to fulfil his motive. All those nine entries were mentioned in Annexure 1/1 besides those cases also. Some more cases against the petitioner were mentioned to show his criminal incident which cover a period from 1984 till 1994. Thus on going through the grounds and the background stories, it could be inferred that the authorities were really scared of the detenu concerned who was doing the criminal activity for more than a decade.

11. Regarding the illegible copies being supplied to the detenu, learned Counsel for the petitioner submits that as held by the Apex Court in the case of Manjit Singh Grewal alias Gogi v. Union of India and ors. 1990 Supreme Court Cases(Cri) 608 (II) this writ petition should be allowed and the detention order should be held illegal as the detenu could not get proper opportunity to represent his case. In this respect I have already mentioned that although there was an endorsement regarding the illegibility of the grounds in one set of copies, the other set was quite legible and in the representation itself, the detenu did not take any ground to that effect, hence that case has got no applicability in the present case.

12. It has again been submitted that from the grounds prepared and the detention order supplied, it could not be found whether the petitioner was granted bail in those cases on which the grounds have been prepared for detention or that the petitioner was in Hazat at the time of detention order being supplied to the

petitioner. That the petitioner was in custody at the time of detention order was passed is clear when the detention order was served in Jail itself and as such it cannot be said that the District Magistrate did not apply his mind regarding the status of the detenu at the time of passing the detention order. It is immaterial whether the petitioner was granted bail by the judicial courts in the cases or not. The only consideration is whether the petitioner comes within the definition of 'anti-social element' and whether acts of the petitioner raised serious problem in public order, or not.

13. It is submitted that regarding hatching of conspiracy by the detenu as alleged in the grounds of detention order, no copy has been supplied regarding the secret meeting as was found during the course of investigation and as such the detention order is bad. Such sort of submission is misconceived. In course of investigation, hatching of conspiracy could be revealed and as such Section 120B of the Indian Penal Code was included in the charge-sheet and when the petitioner is facing trial, he would be supplied with the copies of the police papers and conspiracy is a matter to be gathered from the circumstances of the materials being gathered at the time of investigation and those are matters to be considered at the time of trial of those cases but for the purpose of detention, it can be sufficient one for the purpose of detaining authority to find that Section 120B of the Indian Penal Code was included in the charge-sheet and during investigation such conspiracy could be found out. Document of conspiracy is not available like other documents in a criminal proceeding and non-supply of any such document of conspiracy cannot cause any prejudice in giving effective representation by the detenu. This ground has got no force.

14. The main ground for challenge is that the occurrence for which the grounds have been prepared were spread over from the month of April to June, 1996 and the detention order was passed in the month of December, 1996 i.e. after about seven-eight months and as such there cannot be proximity of the detention order with those cases. It is further stated that those cases have become stale and cannot give a cause of action for detention order. The whole thing is to be considered for the purpose of detention as to whether the detenu had posed a problem to the public order or not. Not only the incidence for which grounds have

been prepared but there were previous history against the petitioner which definitely cause to label the detenu as an anti social element and anti-social element coming under the Act itself is liable for detention. It has again been stated for and on behalf of the petitioner that the cases which had been referred to were only a law and order problem for the authorities and no public peace or public order was at stake. It has already been the contention of the detenu that he was doing works for the Union and a hitch between the Union and the authorities cannot be construed as a problem of public order. In the plain eye, the offences may be construed as submitted as of individualistic character and not of public order but if the grounds are taken in their proper perspective with the background history, it cannot be said that the action of the detenu was only a law and order problem. The way the petitioner had acted caused the public order at stake when his action as has been stated in the grounds had caused even traffic paralysed for a long period and the public in general were being terrorized. It is not a case of pelting of stones by the Union Members at the advice of their leader i.e. the detenu but bombs were being exploded and by that bomb explosion, several persons were injured and when a bomb is exploded in the locality then definitely the public in general are scared of and in that view of the matter, definitely the grounds come within the purview of the public order. If the fact would have been for a single transaction, then it might be a law and order problem but again and again similar conduct was shown by the petitioner-detenu and hence the present case is not covered by the facts and circumstances as reported in the cases of Jagan Nath Biswas v. The State of West Bengal 1975 Supreme Court Cases (Cri) 369 and Smt. Dharmista Bhagat v. State of Karnataka and Anr. (1991) 1 BLJR 11 (NOC) 7. Gap of six months or eight months is not a question alone. It is to be seen whether the detenu is an anti social element and whether the action time and against posed a danger to the public order or not and on the grounds itself I find that public order was at stake and as such the detention order was passed. Whether in some cases of the backgrounds story, the petitioner got acquittal or not is not a matter to be considered. Acquittal may be granted on many circumstances in criminal cases but even some of the background cases are still pending as is admitted by the detenu in paragraph 21 of the writ petition.

15. The rulings submitted by the petitioner's side in D.N. Jatia v. The State of Bihar and Ors. 1990 (2) PLJR 819 Bimla Dewan v. The Lieutenant Governor of Delhi. AIR 19S2 Supreme Court 1257 Shambhu Nath Singh v. The State of Bihar and Ors. 1989 PLJR 654 and Awadhesh Shukla alias Bhutkun Shukla v. The State of Bihar and Ors. 1991 BBCJ 175 have got no application in the present circumstances of the case as discussed above. It is true that every breach of peace or violation of law and order does not mean to disturbance of public order as decided by a Division Bench of this-court in the case of Mahendra Singh alias Mahendra Kumar Singh v. The State of Bihar and Ors. 1987 PLJR 785, but as I have held that if the law and order problem had created a panic and public in general in the locality became scared of and the administration had been put to difficult position for recurrence of such occurrence again and again then definitely the detenu would come within the purview of Anti Social element and public order would be it. question.

16. Mr. P.D. Agrawal, learned Government Advocate has referred to a recent decision of this Court in the case of Mubarak Ansari v. State of Bihar and Ors. 1997 (1) East. Cri 222. Therein it was held acts prejudicial to the public order and six occurrence within a period of three years using dangerous weapons only and in public places then such actions of the detenu would relate to public order and not the law and order problem alone. The decision of that case is applicable in the present case also. It was found that the petitioner had indulged in anti social activities for a long time and even at the time of detention order also, he was in custody in relation to one of those cases. Bomb was used indiscriminately in public places injuring several persons in those occurrences causing public terror and posing a difficult position in the public order. In all these view I find that there is no scope to entertain this writ petition. It further appears that the maximum period of detention has already been served by the detenu and few months are left, hence I do not want to interfere with the detention order.

17. For the reasons aforesaid, this writ petition is dismissed having no force.