

Sunil Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Oct-04-2005

Judge : I.P. Singh and V.N. Sinha, JJ.

Acts : Bihar Control of Crime Act, 1981 - Sections 12(2), 17, 21(1) and 22;
[Constitution of India](#) - Article 22(5)

Appeal No. : Cr. W. J. C. No. 305 of 2005 (DB)

Appellant : Sunil Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Amarnath Singh, S.C. 8

Advocate for Pet/Ap. : Vindhya Keshri Kumar, Sr. Adv. and Sanjay Kumar @ Manu, Adv.

Disposition : Application allowed

Prior history : V.N. Sinha, J. 1. Heard learned Counsel for the petitioner and the Respondents. 2. Petitioner is aggrieved by the detention order, bearing Letter No. 17 dated 13-1-2005, Annexure-1 to this application, passed by the District Magistrate, Begusarai, whereunder resorting to the provisions contained in sub-section (2) of Section 12 of the Bihar Control of Crime Act, 1981 (hereinafter referred to as the Act), petitioner has been detained in Begusarai District Jail. He is further aggrieved by the gr

Judgement :

V.N. Sinha, J.

1. Heard learned Counsel for the petitioner and the Respondents.

2. Petitioner is aggrieved by the detention order, bearing Letter No. 17 dated 13-1-2005, Annexure-1 to this application, passed by the District Magistrate, Begusarai, whereunder resorting to the provisions contained in sub-section (2) of Section 12 of the Bihar Control of Crime Act, 1981 (hereinafter referred to as the Act), petitioner has been detained in Begusarai District Jail. He is further aggrieved by the grounds of detention as contained in order bearing No. 24 dated 15-1-2005, Annexure-2 to this application issued by the aforesaid detaining authority. He is even aggrieved by the order of the State Government as communicated to him by the Deputy Secretary to the Government in the Home (Police) Department, bearing No. 2077 dated 15-3-2005, Annexure-1/3, whereunder State Government has been pleased to confirm the aforesaid detention of the petitioner for a period of one year from the date of issue of the detention order dated 13-1-2005 until 12-1-2006.

3. The ground of challenge raised against the aforesaid detention order is that the representation of the petitioner dated 8-2-2005, as contained in Annexure-5 to this application and filed in compliance of the liberty granted in the concluding portion of the grounds of detention dated 15-1-2005, Annexure-2, through the Superintendent of District Jail Begusarai, has belatedly been disposed of after more than 45 days by the State Government under orders dated 24-3-2005, Annexure-6 to this application and the delay in disposal of the representation is violative of the Constitutional Guarantee contained in Sub-clause (5) of Article 22 of the [Constitution of India](#) as also Section 17 of the Act, which, inter alia, enjoins the State Government to dispose of the representation of the petitioner without any delay.

4. The State Government and the detaining authority by filing two separate counter-affidavits, have refuted the aforesaid submissions. From the counter-affidavit filed on behalf of the State Government duly affirmed by Sri Adalat Singh,

Deputy Secretary to the Government. Home (Police) Department, It appears that the representation of the petitioner dated 8-2-2005, Annexure-5 was forwarded by the Jail Superintendent, Begusarai under his Memo. No. 238 dated 9-2-2005, which was received by the State Government on 10-2-2005, whereafter the same was dealt with in the office of the State Government and then comments were called for from the District Magistrate, Begusarai under Letter No. 844 dated 11-2-2005, who submitted his comments under Memo. No. 197 dated 19-2-2005, which was received by the State Government on 21-2-2005, whereafter the representation was dealt with in the light of the comments by the Deputy Secretary, Home (Police) Department and the Home Secretary on 22-2-2005 and then was sent to the Hon'ble Chief Minister on 24-2-2005 when the election process for the three phase election to the State Assembly was over and the counting was scheduled for 27-2-2005. It appears, from the supplementary counter-affidavit filed on behalf of the State Government that after counting of votes none of the political parties could secure majority and form a popular Government and President's Rule was imposed in the State on 7-3-2005. During the period, counting was to be held the Hon'ble Chief Minister did not think it appropriate to consider the representation and after imposition of President's Rule, the file containing the representation of the petitioner was returned without disposal on 10-3-2005. It appears from the second supplementary counter-affidavit filed on behalf of the State Government that after the file was returned by the Hon'ble Chief Minister, the matter was again considered by the Home Secretary on 12-3-2005, the Chief Secretary on 13-3-2005 and by his Excellency the Governor on 14-3-2005 and then the detention order was confirmed by the State Government under Sub-section (1) of Section 21 read with Section 22 of the Act. While confirming the detention, the authorities unfortunately overlooked to consider the representation of the petitioner, which fact is candidly admitted by them in paragraph 7 of their first counter-affidavit. When their attention was, however, drawn to the aforesaid omission, the representation of the petitioner was dealt with by the Section officer on 15-3-2005, by the Deputy Secretary on 16-3-2005, by the Joint Secretary on 17-3-2005, by the Home Secretary on 18-3-2005, by the Chief Secretary on 20-3-2005 and finally by his Excellency the Governor on 22-3-2005 and the rejection order was communicated to the petitioner under

Memo. No, 2531 dated 24-3-2005, Annexure-6.

5. Having heard counsel for the parties and having considered the pleadings filed by them, including the writ petition, supplementary affidavit, counter affidavit and the two supplementary counter affidavits, we are of the view that the State Government has not been able to explain the delay in its omission to consider the representation of the petitioner in between 10-3-2005 till 15-3-2005, which failure to explaining the delay according to us is violative of the Constitutional Guarantee contained in Article 22(5) of the [Constitution of India](#) and the statutory right under Section 17 of the Act. The explanation that the omission to consider the representation during aforesaid period was unfortunate is no explanation and for failure to explain the delay of five days, detention order and the grounds of detention, Annexures-1 and 2 as also confirmation order, Annexure-1/3 should quashed and is, accordingly, quashed and this application is, accordingly, allowed.

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