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Court : Patna

Decided On : Mar-19-1993

Judge : Nagendra Rai, J.

Appeal No. : Cr. Writ Jurisdiction Case No. 396 of 1992

Appellant : Harendra Upadhyia

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Nagendra Rai, J.

1. The petitioner has filed the present writ application challenging the order of detention dated 13-6-92 passed by the District Magistrate, Gopalganj detaining the petitioner under Section 3(2) of National Security Act (hereinafter to be referred to as the Act) on being satisfied that it is necessary to prevent him from indulging in any manner prejudicial to the maintenance of public order and security of State.

2. It appears that the detention order was served on the petitioner on 14-6-92 and the grounds of detention dated 13-6-92 was also served within time. Thereafter, the detention order was approved by the State Government on 24-6-92. The matter was referred to the Advisory Board and the Advisory Board also opened

that the petitioner should be detained. Thereafter, the State Government confirmed the detention order.

3. The petitioner had filed a representation, a copy of which has been annexed as Annexure-6 to the reply of the counter-affidavit, addressed to the Government of Bihar/Central Government which was forwarded by the Jail Superintendent, Bankipur Central Jail, Patna on 21-7-92 and which was rejected by the State Government on 29-7-92 and order was communicated to the petitioner on 3-8-92. The ground of detention on the basis of which the detention order was passed, was that the petitioner had indulged in criminal cases and he has thrown bomb on the Police Inspector and thus has disturbed the even tempo of the life of the community of the locality.

4. Learned Counsel appearing on behalf of the petitioner has raised several points. He has argued that there was no nexus between the past conduct of the petitioner and the satisfaction arrived at by the detaining authority that the acts of the petitioner were prejudicial to the maintenance of public order and security of the State. He also contended that the allegation made against the petitioner constitutes a law and order problem and not a public order and security of the State inasmuch as the petitioner is alleged to have indulged in committing the crime to certain individuals which cannot be said to disturb the public order or the security of the State. He also stated that there was delay in considering the representation of the petitioner. He has also submitted that the representation, Annexure-6, which was addressed to the Central Government was for revocation of the detention order under Section 14(1)(b) of the Act but the said representation was not sent to the Central Government as such the right of the petitioner to get his representation considered as mandated under Article 22(5) of the Constitution of India has been violated. Learned Counsel appearing on behalf of the State, on the other hand, contended that there is no long gap between the past activities of the petitioner and the passing of the detention order and as such the satisfaction arrived at by the District Magistrate, Gopalganj on the basis of the past activities of the petitioner cannot be said to be vitiated in law. He also contended that the actions of the petitioner especially throwing bomb during day time on Police Inspector and creating a panic in the locality as a result of which the persons due

to fear ever did not go near the injured police officer to help him itself clearly shows that the act of the petitioner has disturbed the peaceful tempo of the life of the community of the locality at large and the acts of the petitioner were prejudicial to the maintenance of public order and security of the State. With regard to consideration of the representation, learned Counsel for the State stated that the representation of the petitioner was attended with promptness and there is no laches and negligence on the part of the State authority and within nine days of the filing of the representation the order on the representation was passed. So far as the non-consideration of the representation by the Central Government is concerned, learned Counsel appearing on behalf of the Central Government contended that the representation making request for revocation of the order under Section 14(1)(b) of the Act at no point of time was filed by the petitioner before the Central Government and as such there is no question of non-consideration of the representation of the petitioner,

5. From the perusal of the grounds it is clear that the petitioner has indulged in several criminal cases and last crime committed by the petitioner was on 26-9-92 when he threw bomb on the Police Inspector. The order of detention has been passed on 13-6-92 and as such there was nexus between the past activities of the petitioner and the satisfaction arrived at by the District Magistrate for passing the detention order with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the public order and security of the State and accordingly, there is no force in the submission advanced on behalf of the petitioner. Similarly, the submission advanced on behalf of the petitioner that the act of the petitioner constitutes a law and order problem and not public order is also devoid of any substance. It is not a kind of offence which determines as to whether it is a law and order problem or infraction of public order. It is potentiality of the act which determines as to whether the act complained of will constitute law and order problem or public order. The petitioner threw bomb during day time on police party and due to his terror the shop-keepers closed their shops and persons present there were also fled away and nobody was ready to help the injured police Inspector. This shows that even tempo of the life of the community of the locality was disturbed due to the act of the petitioner and in that view of the matter the activity of the petitioner was connected with the public order and security of the

State and not was only law and order problem. Accordingly, the aforesaid submission advanced on behalf of the petitioner is also rejected.

6. So far as the representation filed by the petitioner is concerned, it was forwarded by the jail authority on 21-7-92 and thereafter it was considered with promptness as is evident from the counter-affidavit filed on behalf of the State. There is nothing on the record to show that there is any intentional laches on the part of the State Government considering the representation of the petitioner and as such on this ground the order of detention cannot be held to be bad in the eye of law,

7. The next question for consideration is as to whether the petitioner had filed a representation addressed to the Central Government for revocation of his detention order, In the writ application no such point was raised but in the reply to the counter-affidavit which was filed on 3-11-92 the petitioner made the following statement:

That it is submitted that the representation made to the Central Government by the petitioner for revocation of the order of detention has not been dealt with as yet. On this ground alone the order of detention under N. S. A. is fit to be rejected.

No reply has been filed either on behalf of the State Government or the Central Government to the aforesaid statements made on behalf of the petitioner. However, the file of the State Government has been produced by the learned Counsel for the State, From the perusal of which it appears that one copy of the representation was filed by the petitioner which was addressed to the State Government as well as the Central Government. According to the learned Counsel for the State as there was no specific request made on behalf of the petitioner to send his representation to the Central Government for revocation of the order of detention and only one copy of the representation was filed, it was not incumbent upon the State Government to send the same to the Central Government for consideration. It is now well-settled that Section 14(1) of the Act confers power upon the Central Government to revoke the order of detention even if it is made by the State Government or its Officers. This power can be real and effective only if the detenu has right to make a representation to the Central Government against

the order of detention. If the representation filed by the detenu is not forwarded by the State Government or its officer to the Central Government for consideration then that would deprive the valuable right of the detenu to have his detention revoked by the Central Government and this will violate the mandatory constitutional provision under Article 22(5) of the Constitution of India. This question was considered by the Apex Court recently in the case of Amir Shad Khan and Anr. v. L. Hminglians and Ors. : 1991 CriLJ2713 with regard to the provision of Section 11 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. Dealing with the said provision it was held 'that the power of revocation of the order of detention conferred by Section 11 of the Act has a nexus with the right of representation conferred on the detenu by Article 22(5) of the Constitution of India and therefore the State Government when requested to forward a copy of the representation to the Central Government is under the obligation to do so'. It was further held that if the representation is not forwarded the detention order will be vitiated on this ground alone.

8. The question in this case is as to whether any request was made by the petitioner or not to the State Government to send his representation to the Central Government for consideration for revocation of his detention order. The petitioner had filed only one copy of the representation but that was also addressed to the Central Government. In the facts and circumstances of the case, in my view, there was, in substance, a request was made by the petitioner for consideration of his representation by the Central Government for revocation of the order of detention. As stated above, he had filed only one copy of the representation but that will not absolve the State Government of its obligation to send his representation to the Central Government for consideration against the order of detention under Section 14 of the Act. In the case of Amir Shad Khan (supra), the Supreme Court observed that 'when a person is placed under detention he has certain handicaps and if he makes a request that a representation prepared by him may be forwarded to the Central Government as well as the State Government for consideration after taking out copies thereof it would be a denial of his right to represent to the Central Government if the Detaining Authority as well as the State Government refuse to accede to his request and omit to forward his representation to the Central Government for consideration. It is difficult to understand why such a technical and

rigid view should be taken by the concerned authorities in matters of personal liberty where a person is kept in preventive detention without trial. Detenus may be literate or illiterate, they may have access to legal advice or otherwise, they may or may not be in a position to prepare more than one copy of the representation and if they make a request to the authorities which have the facilities to take out copies to do so and forward them for consideration to the Central Government would it be just and fair to refuse to do so in such circumstances refusal to accede to their request would be wholly unreasonable and in total disregard of the right conferred on the detenu by Article 22(5) of the Constitution read with Section 11 of the Act'. In the present case, no doubt, there is no specific prayer by the petitioner that one more copy should be prepared of the representation and that should be sent to the Central Government but in my view that will not make any difference and the State Government is not absolved of its responsibility to send the representation to the Central Government for revocation of the order of detention as while serving the copy of the grounds of detention it was not stated that the petitioner has right to make representation before the Central Government for invocation of the detention order and on that account the possibility of the petitioner being misled by the aforesaid omission cannot be ruled out. In the facts and circumstances of this case, I am of the view that when the petitioner filed a representation which was addressed to the State Government and the Central Government it was incumbent upon the State Government to transmit a copy of the aforesaid representation to the Central Government for consideration or at least would have asked the petitioner to file a separate representation for being transmitted to the Central Government. In that view of the matter and in view of the fact that the petitioner has remained in jail for about nine months, I am of the opinion that the failure on the part of the State Government in not transmitting the representation of the petitioner to the Central Government for its consideration has resulted in denial of the petitioner's constitutional right and on this ground alone the detention of the petitioner is illegal and constitutionally valid and is accordingly quashed.

9. In the result, this writ application is allowed. The petitioner is directed to be released forthwith if he is not wanted in any other case.