

Arvind Kumar Singh Vs. State of Bihar and ors.

Arvind Kumar Singh Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/126900

Court : Patna

Decided On : Feb-19-1996

Judge : Prasun kumar Deb and Surinder Sarup, JJ.

Appeal No. : Cr. W.J.C. No. 223 of 1995 (R)

Appellant : Arvind Kumar Singh

Respondent : State of Bihar and ors.

Judgement :

Prasun kumar Deb, J.

1. The writ of habeas Corpus has been claimed by the above named petitioner for quashing the order dated 16-8.1995, passed by the District Magistrate, Bokaro (respondent No. 2) under Section 12(2) of the Bihar Control of Crimes Act, 1981 and the subsequent order dated 27.8.1995, by which the respondent No. 3 for and on behalf of the State of Bihar has confirmed the order of detention of the petitioner.

2. The breif facts of the case are as follows:

The petitioner is a resident of Bokaro district and according to him, he earns his livelihood by small business and also he works as an agent in Marketing Committee at Bermo within the district of Bokaro. By the impugned order dated

16.8.1995, respondent No. 2 ordered for detention of the petitioner under Section 12(2) of the Bihar Control of Crimes Act, 1981 labelling him as an anti social element and that his detention was necessary as his actions were prejudicial to the maintenance of public order. The grounds of detention as per Section 17 of the Act were issued to the petitioner on 20.8.1995 and the same was supplied to the petitioner on 30.8.1995. Subsequently, the order of detention passed by the District Magistrate, Bokaro, as mentioned above was confirmed by the State government vide order dated 27.8.1995. The petitioner made representation before the State Government after receipt of the order of the State Government, before the State Government on 21.10.1995, but the representation of the petitioner was rejected. It is submitted that the grounds of detention and the confirmation order by the State government were supplied to the petitioner beyond the statutory period and for that reason, we called for the records of the case for verifying the same, but we are satisfied that there was no such delay as complained from the side of the petitioner. So, on technical ground, the petitioner can not succeed in the present case.

3. Three grounds were assigned in the detention order. First ground relates to an occurrence dated 27.5.94. It was alleged that on that date at about 11 a.m. the petitioner along with his associates armed with lethal weapons came to the office of the Project Officer, Kargali Project and enquired about its Personal Officer, Mr. P.C. Byas and the Personal Manager Mr. J.N. Singh. As those officers could not be found there on enquiry, the petitioner opened fire from his revolver and forcibly took away the Jeep from the office. On the same date at about 1 p.m. he along with his associates went to the Rest House of the Project where the said officials were present and created nuisance by shouting and even threatened to kill said Sri P.C. Byas and Sri J.N. Singh. It is alleged that such action of the petitioner and his associates raised panic and alarm amongst the resident of the area. On such incident, Bermo P.S. case No. 99/94 was registered under Sections 144, 148, 307 of the Indian Penal Code and Section 27 of the Arms Act. In the grounds it has been stated that the offences alleged against the petitioner caused disturbance of public law and order.

4. The second ground is related to an offence registered under Bermo P.S. case No. 41/95 dated 23.3.95 under Section 387 of the Indian Penal Code. It was alleged that on 19.3.95, the petitioner along with his associates went to the Office of Head Clerk of Karo Project and demanded Rs. 70,000/- as Rangdari and when the Head Clerk expressed his inability to pay the same, the petitioner put his revolver on his head and he along with his associates beat him up. It has been alleged that the actions of petitioner is nothing but creating problem to the public law and order and his antisocial activities were prejudicial to the public peace and tranquility.

5. The third ground as contained in annexure-2 is related to Bermo P.S. case No. 68/95 dated 28.5.95 under Sections 147, 148, 149, 341, 323, 336, 337, 384 of the Indian Penal Code read with Section 27 of the Arms Act. The allegation against the petitioner is that he along with his associates on 28.5.95 at about 9.30 a.m. being variously armed surrounded a truck belonging to one Manoj Kumar which was unloading potatoes in Kargali Bazar area and demanded Rs. 500/- and on his refusal he was beaten up and fire was opened indiscriminately by the petitioner and his associates.

3. In all the three above mentioned cases, the petitioner has been granted bail and the bail orders have been annexed with this writ petition.

4. In the first case, it was observed at the time of granting bail by the learned A.C.J.M. Bermo at Tenughat that on the facts and circumstances of the case Section 307 I.P.C. could not be attracted and Section 27 of the Arms Act is also not attracted as no revolver could be recovered from the possession of the petitioner. On the second case, in the bail order as contained in annexure-6 it was found by the learned A.C .J.M. that on the facts and circumstances of the case, Section 387 of the I.P.C. could not be attracted as no money was parted from the complainant and that already a compromise was arrived at between the informant and the petitioner regarding the incident itself. On the third case as contained in annexure-7, it was observed that non-bailable Section 384 I.P.C. and 27 of the Arms Act were not attracted and the petitioner had taken the plea that he being an agent of the Marketing Committee, he was pressing for payment of the tax which

was denied by the complainant Manoj Kumar and as such an altercation took place and that the petitioner and his persons who had gone to collect tax were beaten up by the informant and his party. A cross case was also filed by the petitioner.

5. Thus, the fact remains that in all the three cases, which were put before the Judicial Magistrate, the petitioner was granted bail. The last bail order was granted on 1.6.95 and then the petitioner was served with the detention notice and then put behind the bar.

6. Mr. Jerath during the course of submission has impressed upon us that the first ground on which detention has been ordered has already been stale on the date of passing of the detention order as already more than one year had elapsed by that time. On the third case as contained in ground No. 3 had no merit at all as the petitioner as admittedly an agent of the Marketing Committee, paper of which have been annexed with the writ petition and even after that incident, he wanted to get himself relieved of the duty of agency as he felt it insecure in collecting tax when the protection was not being given to the petitioner by the authorities on denial of tax by the traders. His next contention is that only the second ground remains which also appears to have been compromised between the petitioner and the informant. His further submission is that if one of the ground is not tenable in the eye of law then the whole of the detention order should be invalidated.

7. Mr. V. Shivnath appearing for and on behalf of the State has referred to the amendment of Bihar Control of Crimes Act Act 9 of 1994 wherein by amendment, a new Section 12-A has been enumerated by which it has been inserted that such detention order shall not be deemed to be invalid or inoperative merely because one or some of the grounds are vague, non-existent, non-relevant, not connected or not proximately connected with such person or invalid for any other reason whatsoever. Thus, after the amendment of the Act and insertion of the new Section 12-A, if any one of the grounds is valid then the detention order can not be questioned being invalid on other grounds. Thus, this submission of Mr. Jerath also fails. It is true that the ground No. 1 has definitely become stale at the time of passing of the detention order but the same may come in aid to some extent to

show that the petitioner's character was of a 'habitual offender' as per definition of Anti Social Elements as contained in Section 2(d) of the Act. On the third ground, we find some force in the submission of Mr. Jerath to the effect that the petitioner had the scope of intercepting the informant Manoj Kumar and press on him for payment of tax as he was then serving as an agent of the Marketing Committee and that there was case and cross case by both the parties. On the second ground, as it has been held by the learned A.C .J.M. that there was compromise between the parties regarding the incident of Rangdari as alleged against the petitioner, although it is submitted by Mr. V. Shivnath that such sort of compromise shows the behavioural pattern of the habitual offender like that of the petitioner when being scared the complainant had to file a compromise petition to save himself from the wrath of the petitioner. Mr Jerath has refuted such submission as being mere conjectures and surmises.

8. In a democratic set up like that of our country, preventive detention is always considered as treacherous and anathema to civilised thought. Person's liberty is being curtailed by such preventive detention without giving an opportunity of being heard or being tried through the legal system and his liberty is further being curtailed by not allowing him to be tested of such detention through administration of justice. In such a position, preventive detention laws are required to be used very sparingly and in extra-ordinary circumstances. Bihar Control of Crimes Act confers extraordinary power on the executive to detain a person without recourse of the ordinary laws of the land and to trial by courts. There is only a limited right of challenge by the subject of such detention. It is therefore held by the various decisions in the Apex Court that such law required to be strictly construed and that the power conferred on the executive are required to be exercised with extreme care and scrupulously within the bounds laid down in such a law. The provision of Bihar Control of Crimes Act is similar to that of MISA & preventive detention Act. For such application of preventive detention laws under Section 12(2), two grounds required to satisfy apparently on the face of it, (i) that the subject is a antisocial element as per definition contained in Section 2(d) of the Act and (ii) that his actions are such that these are prejudicial to the maintenance of public order and that without such detention, the anti-social act of the subject can not be prevented otherwise in the original course of law.

9. Hon'ble Supreme Court as reported in 1970 SC page 814 has elaborately discussed the distinguishing factors between the 'law and order' and public order. It has been held by their lordships in the following manner:

Maintenance of 'Law and order' is a conception much wider than the conception of maintenance of 'public order'. The latter is the prevention of a disorder of grave nature. Every act that affects 'law and order' need not affect 'public order'. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from the acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of 'law and order'

10. In the present case, there is not an iota for semblance to show in the cases referred or the grounds mentioned that had ever taken the public peace and tranquillity atleast in the locality thereof endangered and prejudicial. In the first case which is definitely a stale one relates to individual rift between the petitioner and two officers. Although it has been stated that the petitioner caused firing indiscriminately in the area, the same was disbelieved by a legal court. Moreover such individualistic nature of the offences can not cause the public tranquillity in danger. Moreover, that case is a long pending one and how far the accused is liable for the offence or not is yet to be decided by a court of law. The petitioner had been released on bail long ago. Regarding the third ground, there is a definite case of the petitioner about the collection of tax as an agent of the Marketing Committee and that case was also related to individualistic nature i.e. in between the petitioner and Manoj Kumar, the truck owner. There is also cross case filed by the petitioner. This case has got no connection with the public order. The second case as mentioned above is also of individualistic character having no semblance of breach of public order. There is also compromise between the parties as is revealed from a judicial order. The actions of the petitioner as stated in the ground of detention, if stretched to its last elastic limit may amount only to a breach of law and order and can not be said to be prejudicial to public order. It can not be said that the action of the petitioner can not be controlled within the ordinary process of

law. The cases have already been filed in the judicial courts and these are under process of trial and seeing the prima facie position the liberty of the petitioner was allowed not to be curtailed by granting bail. Whether the actions of the petitioner caused endangering the life and safety of the public in general in the area can not be construed only on the submissions and the ground taken by the authorities in the preventive detention order, it must be construed on the facts and circumstances of each and every case. I have already mentioned that all the three cases are of individualistic character and public in general or any sect of the societies were never involved. Security of the state can not be said to be in peril due to the actions of the petitioner as contemplated in the grounds of detention.

11. Next comes the question of habitual offender. The case in ground No. 1 has already become stale and it relates to some sort of grievance or dispute between the petitioner and two officers of the project. The nature of dispute or grievance have not been stated or can be construed on the face of it or apparent on it, public in general were not involved in the matter. The same is the case with the second and third ground also. If we take the grounds in chronological manner, the same do not construe offences of habitual character. Those were only individual and dissimilar acts and such sort of actions can not be construed or inferred as of habitual offender. Mr. V. Shivnath tried to impress upon us that the nature of offences are of similar nature i.e. of Rangdari. The second and third case although related to Rangdari as per allegations, but the facts and circumstances are dissimilar in nature. From the nature of the case, it does not connote frequent commission of acts or omissions of the same kind. In the present case, in the definition of anti social element only Section 2(d)(i) cover, other definitions are not attracted. It was never stated in any of the grounds that he was a leader of gang which were spreading horror and terror in the society. The petitioner is already in detention for about six months. It has nowhere been stated from the side of the State that because of the detention of the petitioner, crime has been lowered down in the district of Bokaro or in the area where the crimes were detected against this petitioner.

12. Thus, we are not satisfied that the petitioner is an anti-social element and that the ground shown in the detention order is not sufficient enough to infer that the

actions of the petitioner were prejudicial to the public order. The crimes alleged against the petitioner can be well taken care of within the ordinary course of law and in the course of administration of justice. Thus, on the grounds stated above, we do not find that the preventive detention under Section 12(2) of the Bihar Control of Crimes Act is justified and thus, we quash the order of detention passed against the petitioner . The petitioner shall be released forthwith unless he is required to be detained in custody on any other ground or in any other case.

Surinder Sarup, J.

13. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com