

**Subhash Kumar Vs. the State of Bihar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/138788](http://sooperkanoon.com/138788)

**Court :** Patna

**Decided On :** Nov-14-2007

**Judge :** Ghanshyam Prasad and Shyam Kishore Sharma, JJ.

**Appellant :** Subhash Kumar

**Respondent :** The State of Bihar and ors.

**Disposition :** Application dismissed

**Judgement :**

1. This writ application under Articles 226 and 227 of the Constitution has been filed by the petitioner through which he has challenged his detention order dated 22.11.2006 issued by the District Magistrate, Patna under Section 12(2) of the Bihar Control' of Crimes Act, 1981 (Annexure-3) as well as its confirmation order dated 9.1.2007 issued under the signature of Deputy Secretary, Government of Bihar (Annexure-1) and has also prayed for its quashing.

2. The facts giving rise to this writ application in short are that the Deputy Superintendent of Police, Patna vide his Office Memo No. 2708 dated 12.11.2006 sent a report (Annexure-2) to the District Magistrate, Patna through proper channel with regard to unlawful activities of the petitioner and recommended for his detention under Section 12(2) of the Act, 1981. The District Magistrate, Patna,, respondent No. 2, called for report from the Sr.S.P., Patna and being satisfied with the unlawful activities of the petitioner and necessity of his detention for

maintenance of public order in exercise of power vested under Section 12(2) of the Act passed an order of his detention (Annexure-3) and forwarded the same to the State Government. A copy of the order alongwith grounds for detention was also served upon the petitioner on the very next day. The State Government vide Annexure-4 dated 2.12.2006 approved the order of detention and placed the matter before the Advisory Board. On receipt of recommendation of the Advisory Board, the State Government vide its order dated 9th January, 2007 confirmed the order of detention- and directed that the petitioner shall be detained till 22.11.2007.

3. From annexures annexed with Annexure-3 as well as paragraphs 15 and 16 of the counter affidavit as also Annexure-1 filed by the respondent No. 2, it would appear that three criminal cases are pending against the petitioner. The main ground of the detention of the detenu is that he is making attempt to be released on bail and if he is released, he will disturb the public tranquility and prejudicial to the maintenance of the public order.

4. It appears that inspite of service of grounds of detention, the petitioner did not file any representation before the competent authority.

5. The learned Counsel for the detenu challenged the order of detention on several grounds. However, the main ground is that there is no material on the record to show that the detenu is likely to be released on bail or any bail application of the detenu was pending in any court. Therefore, there was no occasion for the authority to pass order of detention of the detenu and, accordingly, the detention is illegal and bad in law. In support of his submission, he has relied upon a decision of this Court reported in 2006(2) PLJR 497 (Binod Choudhary v. State of Bihar and Ors.). The other submission is non-compliance of Section 19 of the Act. It is submitted that there is no material on the record to show that the detenu was produced before the Advisory Board within three weeks of the detention.

6. However, Mr. Sunil Kumar Singh J.C. to A.A.G.II contends that there is no illegality in order of detention. The District Magistrate has rightly passed order of detention on being sufficient from the report of Dy.S.P. as well as the S.P., Patna that the detenu was making attempt to be released on bail and in fact, the detenu

later on got bail from the court. in this respect, he refers to paragraph-12 of the writ petition. It is further submitted that the decision cited by the detenu has no application in this case as the apprehension of the authority to be released on bail has already been translated into reality and the detenu has obtained bail in cases pending against him.

7. Further, submission of the State counsel is that there is no violation of Section 19 of the Act. All formalities as contemplated under the provisions were completed within the statutory period of three weeks and after obtaining of opinion of the Advisory Board, the order of the detention was confirmed by the Government vide Annexure-1. It is further submitted that neither any representation was filed by the detenu before the authority inspite of service of order alongwith grounds for detention nor the above ground has been taken in the writ application.

8. Considered the rival contentions as well as the decision cited by the detenu. We find substance in the contention of the learned Counsel for the State. The above decision rendered in Binod Choudhary's case is based on a decision of the Supreme Court reported in 2006 (2) (Supra) 115. The facts and circumstances of both the aforesaid cases were different from the case in hand. In both the cases, the prayer of the detenu for bail had been rejected as there was no imminent possibility for bail being granted to the detenu. Accordingly, the ground for detention that the detenu was making effort for bail was found not sustainable in the law. However, in this case, the apprehension of the detaining authority was not unfounded which is apparent from the fact that later on the detenu was granted bail. This fact has been admitted by the petitioner himself in paragraph-12 of the writ application.

9. So far other ground i.e. non-compliance of Section 19 of the Act is concerned, there is no such averment in the writ application nor any document has been filed in support of the contention. Unless, it is shown otherwise the presumption is in favour of the compliance of the provision.

10. Accordingly, we do not find any merit in this application and hence, it is dismissed.

