
(2011) 06 JH CK 0015

Jharkhand High Court

Case No: Writ Petition (Cr.) (H.B.) No. 425 of 2010

Faiju Yadav @ Shiv
Kumar Yadav

APPELLANT

Vs

The State of Jharkhand
and Others

RESPONDENT

Date of Decision: June 24, 2011

Acts Referred:

- Bihar Control of Crimes Act, 1981 - Section 12(2), 21, 22
- Penal Code, 1860 (IPC) - Section 307, 323, 34, 341, 380

Hon'ble Judges: Prakash Tatia, Acting C.J.; Jaya Roy, J

Bench: Division Bench

Advocate: A.K. Kashyap and Swami Nath Prasad Roy, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard Learned Counsel for the Petitioner and Learned Counsel for the State.
2. The Petitioner has been detained under the provisions of Bihar Control of Crimes Act, 1981 (hereinafter referred to as Act of 1981) whereunder by invoking powers as given in Section 12(2) read with Sections 21 and 22 of the Act of 1981, a person whose remaining outside the prison may be dangerous for maintenance of public order because of his involvement in antisocial activities then he can be detained for one year. The Petitioner has been apprehended by the order passed by the District Magistrate dated 26.07.2010 on the basis of total 11 criminal cases and Petitioners representation was rejected and thereafter, the matter was considered by the Advisory Board on whose recommendation the State Government confirmed the detention order. After rejection of the Petitioner's representation and after receiving recommendation from the Advisory Board, the State Government confirmed the detention of the Petitioner by order dated 15.09.2010 and

continued the Petitioner's detention up to 25.07.2011.

3. Learned Counsel for the Petitioner submitted that out of 11 cases mentioned in the order of the District Magistrate, in 10 cases the Petitioner has already been acquitted and it is apparent from the order itself that those were the cases of the year 1990, 1991, 1993, 1994, 1996 and lastly 1998 in which Petitioner was acquitted and only one case u/s 323, 341, 452, 380, 386, 387 and 307/34 I.P.C. of the year 2010 was pending. Therefore, none of the authorities applied their mind to the facts that the Petitioner was sought to be detained on the basis of incidents which have occurred 12 years ago and in those cases, the Petitioner has already been acquitted and there is no allegation of committing any offence by the Petitioner after 1998 except in the year 2010 and that one case is pending in the court. It is submitted that while passing such harsh order of detention, the authorities are required to take into account the relevant facts but in this case, all irrelevant facts have been taken into account, therefore, the order is vitiated. It is also submitted that the case pending against the Petitioner may be about law and order but not of a public order.

4. Learned Counsel for the State vehemently submitted that not-only the Petitioner had a bad character, which is apparent from the cases registered against him and one case is pending, but the Petitioner, after changing his name obtained the service of police and that fact is also taken note of. However, Learned Counsel for the State is not in a position to state how the Petitioner could get the job in the police service when he had 11 cases pending against him and what happened after coming to the knowledge of the State of Jharkhand that the Petitioner is in police service in the State of Bihar and because of committing offence he has been sent to jail in the State of Jharkhand.

5. We are of the considered opinion that the District Magistrate as well as the State Government have not considered the facts which were relevant and have considered the facts which were not relevant and took into account the incidents of even 10-20 years old for passing the order against the Petitioner in the year 2010. Therefore, the order dated 26.07.2010 and the confirming order dated 15.09.2010 are liable to be set aside and are set aside. The Petitioner will be released forthwith, if not needed in any other case.

The writ petition is allowed.