

(2016) 06 PAT CK 0040

PATNA HIGH COURT

Case No: Criminal Writ Jurisdiction Case No. 522 of 2016 Arising Out of P.S. Case No. - null
Year-null Thana-null District-Purnia

Awadhesh Mandal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: June 27, 2016

Acts Referred:

- Bihar Control of Crimes Act, 1981 - Section 12
- Constitution of India, 1950 - Article 226

Citation: (2016) 3 BLJud 234 : (2016) 4 PLJR 199

Hon'ble Judges: Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench: Division Bench

Advocate: Mr. Radhey Shyam Prasad and Mr. P.K. Agrawal, Advocates, for the Petitioner;
Mr. Gautam Bose, AAG - 8 and Mr. S.K. Mishra, AC to AAG - 8, for the State

Final Decision: Dismissed

Judgement

Mr. Navaniti Prasad Singh, J. (Oral)—By the present application in the nature of writ of habeas corpus the petitioner challenges his detention under the provisions of Bihar Control of Crimes Act, 1981 (for short the Act). The detention order was passed in Crime Control Case No. 01/16 by the District Magistrate, Purnea on 13.02.2016 while petitioner was in custody. The order of detention clearly stated that the petitioner was an accused in two cases of the year 2016, he had been an accused in about 46 other criminal cases of grave nature spanning a period of over a decade. In support of the writ petition several grounds have been urged :

(i) There are only two current cases and the rest are stale, thus, there is no justification for the petitioner being treated as a habitual offender within the meaning of the Act.

(ii) It was urged that in terms of Section 19 of the Act the petitioner not having been produced before the Advisory Board within three weeks of his detention, the

detention is vitiated.

(iii) The Advisory Board under the Act was not communicated the petitioner's representation.

2. Counter affidavit, supplementary counter affidavit and rejoinder thereof have been filed.

3. We have heard learned counsel for the petitioner and learned counsel for the State and with their consent are disposing of this application at this stage itself.

4. So far as the first ground is concerned, suffice to say that the very fact that the petitioner has been made an accused in other 46 cases some of which are for very serious offences including two cases in the year 2016 itself justifies the petitioner being treated as an antisocial element under the Act. Thus, we cannot agree with the submission of the petitioner in this regard.

5. Now, we may take up the second issue i.e. petitioner was not produced before the Advisory Board within three weeks of the detention, we may refer to Section 19 of the Act, which is quoted hereunder :

"19. Reference to Advisory Board. - Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 18, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by the District Magistrate mentioned in sub-section(2) of section 12 also the report by such officer under sub-section(3) of that section."

6. Nowhere this Section makes it obligatory on the State to produce the detainee before the Advisory Board within three weeks. All it says is that the matter has to be placed before the Advisory Board within three weeks. If the Advisory Board then considers it proper, it may, in terms of Section 20 of the Act, call upon the State to produce the detainee before it. This matter has been decided by the Full Bench of this Court in the case of **Raj Kumar Gupta v. State of Bihar & Ors. since reported in AIR 1990 Patna 32** wherein this specific issue had been raised in respect of Section 19 of the Act itself and the Full Bench clearly held that it is not that the detainee has to be physically produced before the Advisory Board within three weeks, rather the case has to be referred to the Advisory Board within three weeks.

7. In the present case, Annexure-B to the counter affidavit clearly shows that the case of petitioner was referred to the Advisory Board on 04.03.2016 whereas the detention order dated 13.02.2016 was served on the detainee in jail on 16.02.2016, therefore, it was well within the time prescribed. We cannot, thus, accept the submission of the petitioner.

8. The third submission of the petitioner was with regard to his representation not having been placed before the Advisory Board. Nowhere in the writ petition has it been stated by the petitioner that he ever made a representation to the Advisory Board. The reference to representation in Section 19 of the Act could and would only mean representation to the Advisory Board. It may be noted that on 01.03.2016, petitioner having been served with detention order dated 13.02.2016 on 16.02.2016, sent a representation to the State Government through the Jail Superintendent. In due course the same was forwarded by the Jail Superintendent to the District Magistrate, Purnea, who on 09.03.2016 forwarded it to the State. The State considered the same and ultimately rejected the same by order dated 12.03.2016. In our opinion, this does not reflect any undue delay in considering his representation. We may also observe that while this representation to the State was under consideration his case had already been referred to the Advisory Board on 04.03.2016 itself and ultimately on 28.03.2016 the Advisory Board also having asked for production of the petitioner in person and having heard him as also having examined the entire case records upheld his detention.

Thus, this third ground is also not sustainable.

9. We have also taken note of the fact that there is no delay in disposal of the representation by the State. Thus, we find no merit in this application. It is, accordingly, dismissed.