

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.403 of 2022

Arising Out of PS. Case No.- Year-0 Thana- District- Begusarai

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PRINCE KUMAR Son of Raja Ram Singh Resident of Village - Badalpura,
P.S. - Matihani, District - Begusarai.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna. Bihar
2. The Principal Secretary, Department of Home, Government of Bihar, Patna. Bihar
3. The Under Secretary, Department of Home, Government of Bihar, Patna. Bihar
4. The District Magistrate, Begusarai. Bihar
5. The Superintendent of Police, Begusarai. Bihar
6. The Superintendent, Bhagalpur Central Jail, Bhagalpur. Bihar
7. The Sub-Divisional Police Officer, Sadar, Begusarai. Bihar
8. The Station House Officer, Town Police Station, Begusarai. Bihar

... .. Respondents

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Appearance :

For the Petitioner : Mr. Shashank Shekhar, Advocate
For the Respondents : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-11-2022

The present writ application under Article 226 of the Constitution of India has been filed seeking issuance of writ in the nature of writ of Habeas Corpus and quashing of an order issued



by the Department of Home, Government of Bihar, dated 04.11.2022 whereby an order dated 04.02.2022 passed by the District Magistrate, Begusarai in exercise of powers conferred under sub-section (2) of Section 12 of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as the 'Act') has been affirmed.

2. The effect of the impugned order dated 25.02.2022 read with the order of the District Magistrate dated 04.02.2022 was, putting the petitioner under preventive detention for a period of three months from 04.02.2022 till 03.05.2022. The writ petition was filed on 13.04.2022. Subsequently, taking aid of sub-section (2) of Section 12 and Section 21 read with Section 22 of the Act, the period of preventive detention which was originally for a period of three months up to 03.05.2022 came to be extended for further period of three months from 04.05.2022 to 03.08.2022 by an order dated 29.04.2022. The said period of detention was again extended for a period of three months invoking the same provisions of the Act for a period of 04.08.2022 to 03.11.2022 by an order dated 02.08.2022. The petitioner has filed I.A. No. 1 of 2022 seeking amendment in the writ petition for questioning the legality of the subsequent orders of extension of the period of preventive detention including the order dated 02.08.2022.



3. There is yet another development which is not in dispute. After completion of the extended period of preventive detention on 03.11.2022, the petitioner was released from detention on 04.11.2022 at 12:00 noon, as at the time of his release, there was no order of preventive detention operating against him. It is the petitioner's case that the petitioner was subsequently apprehended on 05.11.2022 again on the strength of an order dated 04.11.2022 issued by the Home Department (Police) purportedly extending the period of preventive detention of the petitioner for a period up to 03.02.2022 in continuation with the original order dated 25.02.2022 and subsequent orders extending period of detention.

4. By filing I.A. No. 2 of 2022, the petitioner has sought further amendment in the relief portion of the writ petition for seeking quashing of the said order dated 04.11.2022 served on the petitioner on 05.12.2022, allowed by an order dated 14.11.2022 passed in this case.

5. The said order dated 04.11.2022 has been brought on record by way Annexure-9 to the writ application. It is the petitioner's case that the said order 04.11.2022 is wholly without jurisdiction in view of the clear provision under Section 23 of the Act and the action of the State authorities in apprehending the



petitioner on 05.11.2022 after the period of preventive detention, originally passed, had expired is wholly illegal and violative of Article 22 of the Constitution of India.

6. Mr. Shashank Shekhar, learned counsel appearing on behalf of the petitioner, assailing the original order of detention has submitted, questioning the action of the respondents in putting the petitioner under preventive detention on the strength of the impugned order dated 25.02.2022, that it is violative of the mandatory constitutional requirements enumerated under Article 22(5) of the Constitution of India on various counts including the fact that the petitioner's representation against the order of preventive detention was not expeditiously disposed of by the competent authority and the disposal of the petitioner's representation does not disclose any reason for rejection. He has submitted that immediately after the order of preventive detention was served upon the petitioner on 06.02.2022, he had handed over his representation to the authorities in Bhagalpur jail on 07.02.2022. The jail authorities took three days to forward the petitioner's representation and sent it to Home Department on 10.02.2022. Thereafter the detention order was confirmed by the State Government on 14.02.2022. The petitioner's representation was sent by the Home Department to the District Magistrate,



Begusarai seeking his comments. Subsequently, the petitioner's representation came to be rejected on 25.02.2022 that is nearly 18 days after submission of his representation. He has submitted that the original order of preventive detention itself suffers from patent illegality and deserves interference by this Court on the sole ground of delay in disposal of the petitioner's representation. He has submitted that the respondents were required to explain each day of delay in disposal of the petitioner's representation in their counter affidavit which the state respondents have not done. He has relied on Supreme Court's decision in case of ***Rashid Kapadia v. Medha Gadgil*** reported in **(2012) 11 SCC 745** on the point of delay in disposal of the petitioner's representation, to bolster his contention.

7. Learned counsel appearing on behalf of the State, on the other hand, has submitted that the delay in disposal of the petitioner's representation has been duly explained in the counter affidavit. Before considering the petitioner's representation, comments were sought from the District Magistrate and after analysing the comments received from the District Magistrate, the respondent No. 3 passed the order rejecting petitioner's representation. Delay of 18 days in disposal of the petitioner's



representation, he contends cannot be said to be undue and unreasonable in the facts and the circumstances of the case.

8. After having heard learned counsel for the petitioner and the learned counsel for the State, we are of the view that since we are satisfied that the subsequent order passed on 04.11.2022 in purported exercise of the proviso to sub-section (2) of Section 12 of the Act is in breach of statutory prescription under Section 23 (2) of the Act. We need not go into other issues raised in the present proceeding. We are of the considered view that other issues raised by the petitioner in this case has become academic only as the petitioner has already remained under the preventive detention for the period 04.02.2022 till 03.11.2022.

9. For examining the challenge to the order dated 04.11.2022, we need to notice Section 23 of the Act which reads as under:-

“23. Revocation of detention orders.

(1) Without prejudice to the provision of section 21 of the General Clauses Act, 1897 (10 of 1897), detention order may, at any time, be revoked or modified--

(i) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 12, or by the State Government to which that officer is subordinate.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 12



against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government or an officer mentioned in sub-section (2) section 12, as the case may be, is satisfied that such an order should be made.”

10. Admittedly, the extended period of preventive detention by virtue of order dated 02.08.2011 expired on 03.11.2022, there being no order of preventive detention in operation. Accordingly, the petitioner was released from the custody. It is true that by invoking Section 22 of the Act, the period of preventive detention could be extended up to a maximum period of one year. However, once the period of preventive detention expired, in view of sub-section (2) of Section 3 of the Act, there was no question of extending the period of preventive detention which had already expired and upon expiry of which the petitioner had been released. We do not see any ambiguity in the language of sub-section (2) of Section 23 of the Act which clearly lays down that the revocation or expiry of a detention order shall not bar making of a fresh detention order under Section 12 of the Act against the person in any case where fresh facts have arisen after “the date of revocation or expiry”. Upon expiry of period of preventive detention, the only course which was open for the State was to invoke Section 12 of the Act



upon fulfilling the clear stipulations in sub-section (2) of Section 23 of the Act which has been quoted hereinabove.

11. Article 21 of the Constitution of India protects every person from being deprived of his life or personal liberty except according to the procedure established by law. Article 22 of the Constitution guarantees fundamental rights of a citizen against arrest or detention in certain cases. There cannot be any gainsaying that clause (b) of sub-Article (3) of Article 22 empowers the State to make law providing for preventive detention which is an exception to the fundamental rights guaranteed under Article 22(1) and Article 22(2) of the Constitution. This is the reason why the Constitution of India itself has clearly laid down the conditions and provided safeguards for exercise of power of preventive detention under sub Articles (4), (5), (6) and (7) of Article 22 of the Constitution.

12. Preventive detention is a serious invasion of personal liberty and it is therefore incumbent upon the Courts having jurisdiction to enforce fundamental rights that the laws made to exercise power of preventive detention are zealously followed. Any breach of mandatory statutory requirement of law of preventive detention shall render exercise of such power illegal and unconstitutional. In our considered view, the order of



preventive detention passed on 04.11.2022, after the petitioner's release upon completion of his period of preventive detention, is wholly illegal and unconstitutional being violative of Articles 21 and 22 of the Constitution of India and Section 23(2) of the Act.

13. In view of the aforesaid discussions, the impugned order dated 04.11.2022, in our considered opinion, is unsustainable and is accordingly quashed. Let the petitioner be released from the detention forthwith.

14. It goes without saying that the State shall be at liberty to Act in accordance with law especially in accordance with the provisions of the Act.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	NA
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