

Vijay Narain Singh v State Of Bihar & Ors, 1984 AIR 1334

FACTS

There was a gruesome murder of two young sons of Kashinath Bajori on April 20, 1983. In the course of investigation by the police it transpired that they were kidnapped from the petrol pump on April 19, 1983 and the petitioner Vijay Narain Singh demanded a ransom of Rs. 50,000 from the father of the victims. The demand for ransom having not been fulfilled, the two boys were done to death brutally. Based on first information report a case was registered at Bhagalpur Kotwali under ss. 364, 302 and 201, all read with s. 34 and s. 120B of the Indian Penal Code, 1860 against the petitioner Vijay Narain Singh, his brother Dhanonjoy Singh, one Bimlesh Mishra and two unknown accused. The petitioner along with his co-accused has been committed to the Court of Sessions and charges have been framed under s.302 read with s. 34/120B, 386 and 511 of the Indian Penal Code. A learned Single Judge of the Patna High Court by his order dated August 9, 1983 appears to have directed that the petitioner be enlarged on bail of Rs. 10,000 with two sureties. The District Magistrate, Bhagalpur on being satisfied that his detention was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention on August 16, 1983, before the petitioner could be released on bail. The petitioner moved a petition in the Patna High Court for grant of a writ of habeas corpus while he was still in jail challenging the impugned order of detention. The learned Judges dismissed the writ petition on technical grounds. Instead of moving the High Court, the petitioner has filed this petition under Art. 32 of the Constitution. The order of detention is in two parts, the first of which lays a factual basis for making the order on the ground that the petitioner is an anti-social element. The second part of the impugned order is styled as grounds. the grounds mentioned therein are one and the same viz. his detention was necessary with a view to preventing him 'from acting in any manner prejudicial to the maintenance of public order'.

PROVISIONS

1. s. 12(2) of the Bihar Control of Crimes Act, 1981.
If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the power conferred upon by the said sub-section: Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.
2. Sec 2d of Bihar Control of Crimes act
Anti-social Elements" means a person who-
(i) either by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or (ii) habitually commits or abets

the commission of offences under Immoral traffic in women and girls act; or (iii) who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or (iv) has been found habitually passing indecent remarks to, or teasing women or girls; or (v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

3. Art. 22(5) of the Constitution

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

ISSUES

1. Was there contravention of constitutional principle under art 22(5) of Indian constitution?
2. How will sec 12 of the Bihar control of crimes act be interpreted with sec 2d of the act, can they be harmoniously constructed and are the conditions remote to detention?

RATIO AND RATIONALE

Detention order was quashed and petition allowed.

1. There was violation of the constitutional principles as the conditions were remote. The law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.
2. It is seen from section 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social element, he cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. these sub-clauses the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar

acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word 'habitually' separately in sub-clause (i), sub-clause (ii) and sub-clause (iv) of section 2 (b) and not in sub-clauses (iii) and (v) of 2(d). If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the subclauses (i) to (v) of 2(d) was sufficient to make a person an 'anti-social element', the definition would have run as 'Anti-Social Element' means 'a person who habitually is ...' as 2(d) of the Act now stands. The District Magistrate has relied on three incidents to hold that the petitioner is an anti- social element. They are-(i) forcibly demanding subscription at the point of a gun and (ii) teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The detaining authority does not state how the criminal cases filed in earlier instance terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover, the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of section 2(d) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. It was held that it is not possible to hold that the petitioner can be called an 'anti-social element' as defined by section 2 (d) of the Act. The order of detention impugned in this case, therefore, could not have been passed under section 12 (2) of the Act which authorises the detention of anti-social elements.