IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 926 of 2024

Ganesh Singh @ Nishant Singh son of Birendra Singh, resident of Flat No.2, Ganga Apartment, Niranjan Singh Complex, Dimna Road, Mango, PO Mango, PS Olidih, Town Jamshedpur, District East Singhbhum.

… **Petitioner**

-versus-

1. The State of Jharkhand through Chief Secretary, having Office at Project Building, PO Dhurwa, PS Jagarnathpur, District Ranchi.
2. Additional Secretary, Department of Home, Prison and Disaster Management, Government of Jharkhand, having Office at Project Bhawan, PO Dhurwa, PS Jagarnathpur, District Ranchi.
3. The District Magistrate cum Deputy Commissioner, East Singhbhum, PO PS Bistupur, Town Jamshedpur, District East Singhbhum.
4. The Senior Superintendent of Police, East Singhbhum, PO PS Sakchi, Town Jamshedpur, District East Singhbhum.

… **Respondents**

For the Petitioner : Mr. Pran Pranay, Advocate
For the Respondents: Mr. Manoj Kumar, G.A. III

PRESENT: SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

O R D E R

RESERVED ON 19.12.2024 ***PRONOUNCED ON 20/12/2024***

Per Ananda Sen, J. In this writ petition, filed under Article 226 of the Constitution of India, petitioner has challenged the order dated 04.09.2024 contained in Memo No.317(A) passed by the District Magistrate-cum-Deputy Commissioner, East Singhbhum whereby the petitioner was put under preventive detention in terms of Section 12(1) and 12(2) of the Jharkhand Control of Crimes Act, 2002. The petitioner has also challenged the order dated 13.09.2024 passed by the Additional Secretary, Department of Home, Prisons and Disaster Management, Government of Jharkhand, whereby and whereunder the order of preventive detention passed under Section 12 of the Jharkhand Control of Crimes Act, 2002 dated 04.09.2024 has been confirmed. The petitioner, by way of amendment has also challenged the order dated 29.11.2024 passed by the Additional Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, whereby

and whereunder the order of preventive detention has been further extended from 04.12.2024 to 03.03.2025.

2. Learned counsel for the petitioner submits that no case is made out to detain the petitioner under the Jharkhand Control of Crimes Act. Petitioner is neither an habitual offender nor an anti-social element as defined under Section 2(d) of the Jharkhand Control of Crimes Act. Further, there is nothing to suggest that the petitioner is a threat to the society and is a threat to public order. The officials of the District have tried to convert “law and order” problem to that of “public order”, and are thus unnecessarily harassing the petitioner. He submits that the cases which have been referred to, if scrutinized properly in the light of the affidavit filed by the petitioner, would suggest that in three out of those cases either final form has been submitted or petitioner has been acquitted. One of the case relate to sale of land, which cannot be said to be of such criminal magnitude, which would disturb the entire “public order” of the area. It has been further submitted that the State has not filed any application for cancellation of bail of the petitioner and he is on bail in the cases.

3. Learned counsel appearing for the State-respondents submits that there are criminal cases pending against the petitioner and it was necessary to detain the petitioner because of those criminal cases and Station Diary Entries (Sanha). The Station Diary Entries would suggest that the petitioner is involved in several criminal cases and is a threat to general public of the locality and society as a whole. He also submits that in the impugned order, it has been mentioned that to conduct peaceful assembly elections of the State and also to control the crime rate in the area, it is necessary to keep the petitioner in custody. Thus, the impugned order was passed. He lastly submits that there is no procedural irregularity in detaining the petitioner.

4. We have heard the learned counsel for the parties and have gone through the pleadings.

5. Petitioner has been kept under the preventive detention by the impugned order dated 04.09.2024 and later on the same has been extended vide order dated 29.11.2024. While going through the impugned order, we find that the State has mentioned 7 (seven) cases against the petitioner. Those cases are as follows: -

I. Mango (Olidih O.P.) Police Station Case No.69 of 2016 dated 26.02.2016 under Sections 341, 323, 379, 337, 307 of the Indian Penal Code and Section 27 of the Arms Act;

II. Mango Police Station Case No.439 of 2015 dated 03.09.2015 under Sections 307, 448, 504, 120B, 34 of the Indian Penal Code and Section 27 of the Arms Act;

III. Mango (Olidih O.P.) Police Station Case No.465 of 2012 dated 26.09.2012 under Sections 420, 468, 469, 471, 506, 323, 34 of the Indian Penal Code;

IV. Mango (Olidih O.P.) Police Station Case No.124 of 2018 dated 11.05.2018 under Sections 302, 120B, 34 of the Indian Penal Code and Section 27 of the Arms Act;

V. Telco Police Station Case No.135 of 2022 dated 03.10.2022 under Sections 302, 120B, 34 of the Indian Penal Code and Section 27 of the Arms Act;

VI. MGM Police Station Case No.70 of 2021 dated 08.07.2021 under Sections 467, 468, 470, 471, 447, 34 of the Indian Penal Code;

VII. Jarmundi (Dumka) Police Station Case No.54 of 2023 dated 28.07.2023 under Sections 302, 34 of the Indian Penal Code and Section 27 of the Arms Act.

6. It is admitted that in Mango Police Station Case No.465 of 2012 and in Mango Police Station Case No.124 of 2018, the police has submitted final form in favour of the petitioner as they failed to find any material evidence against the petitioner. Mango Police Station Case No.439 of 2015 ended in acquittal of the petitioner.

In MGM Police Station Case No.70 of 2021, petitioner is on anticipatory bail. Same relates to the allegation that the petitioner has sold some government land fraudulently. This case is not of such nature to hinder public order.

7. If all the above four cases are removed from the list, then the cases which remain against the petitioner are, Mango (Olidih) Police Station Case No.69 of 2016, Telco Police Station Case No.135 of 2022 and Jarmundi Police Station Case No. 54 of 2023. These cases culminate in “law and order problem” and it cannot be said that there is disturbance of public order.

8. There is a difference between “public order” and “law and order”. The Hon’ble Supreme Court, in the case of ***Ameena Begum versus State of Telangana and Others*** reported in ***(2023) 9 SCC 587,*** while referring to various earlier judgments of the Hon’ble Supreme Court, has distinguished between disturbances relatable to law and order and disturbances caused to public order. At paragraph 37 to 40 thereof, the Hon’ble Supreme Court has distinguished between the phrases *“public order”* and *“law and order”*. Paragraphs 37 to 40 of the aforesaid judgment reads as under: -

> ***“37. We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia v. State of Bihar, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words: (SCR pp. 745-46, paras 54-55)***
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> > ***“54. … Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. …***
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> > ***55. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.”***
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> ***(emphasis supplied)***
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> ***38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquility affects the public order and the question to be asked, as articulated by Hon’ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B., is this: (SCC p. 100, para 3)***
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> > ***“3. … Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?”***
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> ***39. In Arun Ghosh case, the petitioning detenu was detained by***

> ***an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (Arun Ghosh case, SCC p. 101, para 5)"***
> ***40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia also ruled: (Arun Ghosh case, SCC pp. 99-100, para 3)***
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> > ***"3. … Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. … It is always a question of degree of the harm and its effect upon the community. … This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."***

9. In ***Criminal Appeal of 2024 arising out of SLP (Crl.) No.12516 of 2024) [Arjun S/o Ratan Gaikwad versus The State of Maharashtra & Others]*** reported in ***2024 INSC 968 (Neutral Citation),*** the Hon'ble supreme Court on 11th December, 2024, at paragraphs 12, 13 and 14 thereof has reiterated the judgments of the Hon'ble Supreme Court as referred to in ***Ameena Begum (supra)***. The Hon'ble Supreme Court at paragraph 15 of the judgment in the case of ***Arjun (supra)*** has held as follows: -

> ***"15. As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behavior and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack."***

10. The Hon'ble Supreme Court, in the case of ***Arjun (supra)*** at paragraph 15 has observed that a person has to create ruckus by his behavior and continue with such activities, in a manner to create a terror in the minds of the public at large, then only he is a threat to the public order. In this case, it is missing.

11. The phrase “anti-social element” has been defined under the Jharkhand Control of Crimes Act, 2002 at Section 2(d) thereof. Section 2(d) of the Act reads as under: -

> ***“2. Definition.- In this Act, unless the context otherwise requires-***
> ***2(a) …***
> ***2(b) …***
> ***2(c) …***
> ***2(d) “Anti-social Elements” means a person who-***
> ***2d(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***
> ***2d(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956;***
> ***or***
> ***2d(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 communities; or***
> ***2d(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or***
> ***2d(v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.”***

12. This Court, in the case of ***Abhimanyu Singh @ Sintu Singh versus The State of Jharkhand & Others [W.P.(Cr.) No. 868 of 2024]*** has observed that a person should be habitual in committing offences, which would create negative impact and terror in the mind of the public at large and the society.

13. In this case, we find that the cases, which are pending against the petitioner are – one of 2016 and one of 2023, which are criminal offences in nature. So far as other pending cases, i.e., MGM Police Station Case No.70 of 2021 is concerned, in is in respect of purchase and sell of government land fraudulently. This clearly suggests that the petitioner is not an “anti-social”, as per the definition of the Act, as in his case, he cannot be said to be habitual offender. Further, the petitioner is on bail.

14. The Hon’ble Supreme Court in the case of ***Shaik Nazneen versus State of Telangana and Others*** reported in ***(2023) 9 SCC 633*** has held that the State is not without remedy in case the detenu is much a menace to the society. The prosecution should seek for the cancellation of bail and/or move to the Higher Court for that purpose. Taking shelter under the preventive detention law is not the proper remedy. It is necessary to quote paragraph 19 of the said judgment, which reads as under: -

> ***“19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged,***

> ***then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case."***

15. In this case, admittedly, we find that State has not filed any application for cancellation of bail of the petitioner.

16. So far as the Station Diary Entries (Sanhas) are concerned, it is an admitted case that those have not culminated in any criminal case. Merely entering Station Diary Entry alleging some acts cannot be the ground to detain a person. It is surprising that if the acts mentioned in the Station Diary Entries are criminal acts and are cognizable in nature, then why the State has not filed any First Information Report. Law provides that if cognizable offence is committed and is brought to the knowledge of any authority, First Information Report should be lodged. The Deputy Commissioner is the Head of the Prosecution of the District and he has passed the impugned order and has referred to Sanhas (Station Diary Entries). If at all those acts mentioned in Sanhas (Station Diary Entries) make out any criminal offence, what prevented the State to file a First Information Report is a mystery for us.

We, thus, conclude that those Station Diary Entries are made only for the purpose of keeping the petitioner in detention without there being any basis.

17. Further, the ground that for proper conduction of Assembly Elections, petitioner needs to be kept in detention, is absolutely not a ground for detention. If this becomes a ground, then the same will amount to giving unbridled, uncanalised sweeping power to the administration to detain any person under the Act during the time of election, it will be nothing, but playing with the liberty of citizens. Further, in this case, the Assembly Elections in the State are already over now after formation of an Elected Government.

18. Liberty of a citizen of our country must be kept at the highest pedestal. Same cannot be curtailed on the whims and wishes of any of the officials of the State. Not only there has to be a good reason to curtail the said liberty, but that reason has to be strong enough and the evidence should be impeccable. With the fall of a hat, a citizen cannot be deprived of his personal liberty. Further, the election process in the State is already over. Even on the pretext of holding fair and proper election, liberty of the citizen

cannot be curtailed.

19. Considering what has been held above, we are inclined to allow this writ petition. Impugned order dated 04.09.2024 contained in Memo No.317(A) passed by the District Magistrate-cum-Deputy Commissioner, East Singhbhum, order dated 13.09.2024 passed by the Additional Secretary, Department of Home, Prisons and Disaster Management, Government of Jharkhand and also the order dated 29.11.2024 passed by the Additional Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand are hereby set aside.

20. This Criminal Writ Petition is, accordingly, allowed. Pending interlocutory applications, if any, stand disposed of.

(Ananda Sen, J.)

Per Pradeep Kumar Srivastava, J. – I agree

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated, the 20th December, 2024
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