

Hussainara Khatoon and Others (II)

Vs

Home Secretary, State of Bihar, Patna

Writ Petition No. 57 of 1979

(P. N. Bhagwati, A. P. Sen JJ)

19.02.1979

ORDER

BHAGWATI, J. –

1. Mr. Lal Narain Sinha appearing on behalf of the respondent has handed over to us in its English translation a letter dated February 9, 1979 addressed by the Special Secretary to Government of Bihar to all District Officers, setting out a policy decision taken by the State Government in regard to undertrial prisoners. The State Government has, according to this letter, decided to withdraw, with the permission of the courts concerned, the following types of cases as provided under the law.

- (a) All cases under the Forest Act, Excise Act, Police Act and Motor Vehicles Act the offences of which are of ordinary nature and the often (sic) accused is confined in jail six months or more;
- (b) All cases under Section 109 of the Criminal Procedure Code in which the accused is in jail for more than six months. Immediate steps may be taken to drop such cases under Section 111(6) of Criminal Procedure Code.
- (c) All leper prisoners or prisoners suffering from other dangerous infectious diseases who are accused of offences other than those referred to in clause (a) above who are in jail for six months and above. The cases of all the accused who are suffering from the above kind of diseases should be withdrawn. A committee consisting of the District Magistrate, the Civil Surgeon and Superintendent of Jail as members shall certify that such prisoners have such diseases.
- (d) All cases under the Indian Penal Code and local or special laws in which the accused is confined in the jail for periods exceeding the maximum period of imprisonment possible for which he could be sentenced if convicted.
- (e) All such cases which are pending investigation by the police of prisoners who are confined in jail for period more than two years. Before orders for withdrawal of such cases are passed their investigation by the police should be taken only at the place where the charge-sheet has been submitted to the Court. The District Magistrate should review in the detail with the Superintendent of Police each such case and if he is satisfied that investigation by the police in a particular case is delayed due to justifiable reason or where he considers that withdrawal of the case is not desirable in the public interest then such cases shall not be withdrawn. It shall be the personal

responsibility of the Superintendent of Police to speedily complete the investigation of cases.

and instruction the District Officers to immediately review the case of all the undertrial prisoners confined in jails of their respective districts and take necessary legal steps for the withdrawal of cases in accordance with the policy decision. We are glad that the State Government has activated itself and responded in some measure to the observation made by this Court and decided to withdraw certain specific kinds of cases against the undertrial prisoners in the jails in the State of Bihar. The only observation we would like to make in this regard is that so far as clause (e) of the policy decision is concerned it would be desirable if it is clarified, so as to indicate precisely what kinds of cases of persons who have been undertrial prisoners for more than two years without the trial having commenced, are sought to be covered by that clause. It is stated in that clause that the District Magistrate should review in detail with Superintendent of Police each such case and it is only where he is satisfied that investigation by the police in a particular case is delayed due to justifiable reason or he considers that withdrawal of a case is not desirable in the public interest, that such case shall not be withdrawn. We hope and trust that decision in this respect will be taken by the District Magistrate in regard to each case at a very early date and that no undue delay will be caused in reaching the decision whether such case should be withdrawn or not. We are glad that a step has been taken by the State Government in the right direction and we hope and trust that the other State Governments will also follow suit and show all the concern for the undertrial prisoners which a humanistic approach in the context of the constitutional rights requires.

2. Mr. Lal Narain Sinha has stated before us that though our order dated February 5, 1979 was issued from this Court on February 6, 1979, it did not reach the respondent until February 13, 1979. We are not at all happy that there should have been postal delay in the Order reaching the respondent who has his office in Patna, but not more than 2 hours journey by the air. We fail to see why a registered packet containing the Order issued on the February 6, 1979 should take so long to reach the respondent. This is a matter which needs seriously to be looked into the by the Posts and Telegraph Department of the Government of India.

3. We are informed by Mr. Lal Narain Sinha that the Government of Bihar is compiling the list of undertrial prisoners who have been in jail for a period of over eighteen months pursuant to the Order made by us on February 5, 1979 and he hopes that the list would be ready within the two weeks. He has stated to us that the particulars from about 17 jails in the State of Bihar have already been collected by the Government of Bihar and that the collection of particulars from the other jails is under way. We would, therefore, adjourn the hearing of the writ petition initially for the week in order that the particulars which have already been collected may be filed by the State of Bihar before that date and the particulars in regard to undertrial prisoners in the remaining jails may be filed within a week thereafter.

4. Mrs. Hingorani has pointed out to us that there is some difficulty in regard to woman and children who have been released on personal bond pursuant to the order made by us inasmuch as there is no one to take care of them and they do not know where to go. We would ask the Social Welfare Department of the Government of Bihar to contract the women and children who have already been released on their personal bond and to arrange for looking after them until the hearing and final disposal of the writ petition. We would also direct the Jail authorities that as and when they release any women and children on their personal bond, they will immediately contact the Social Welfare Department of the Government of Bihar or the District Officer-in-charge of this Department and make arrangement for their being taken care of and looked after by the social Welfare Department

as soon as they are released on the personal bond.

5. The writ petition will stand adjourned initially for period of one week in order to enable the State of Bihar to the list containing the particulars of the undertrial prisoners pursuant of the Order dated February 5, 1979 and question which may arise at the hearing of the writ petition. Since these questions are of considerable importance we direct that notice be issued to the Attorney-General, as also to the Supreme Court Bar Association. That writ petition will stand over for hearing to February 26, 1979.

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