

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Criminal Writ Jurisdiction)

W.P. (Cr.)(H.B)(D.B) No. 40 of 2021

1. Balanand Mandal, s/o Permanand Mandal (Father of arrestee Yoganand Prasad), r/o Village-Ghormara, PO-Ghormara, PS-Mohanpur, District-Deoghar.
2. Rajendra Mandal, s/o Dhanu Mandal (Father of arrestee Harihar Mandal), r/o-Ghuitya Bada Ashana, PO-Simorjor, PS-Mohanpur, District-Deoghar.
3. Lakhmi Narayan Mandal, s/o Harihar Mandal (Father of arrestee Pramod Kumar), r/o Village-Saljora Bandari, PO-Jokela, PS-Saraiyahat, District-Dumka.
4. Suchit Kumar Pandit, s/o Aden Pandit (Father of arrestee Rahul Arya), r/o Village-Dahua, PO-Madhuwan, PS-Saharatari, District-Deoghar.
5. Triveni Mandal, s/o Anandi Mandal (Uncle of arrestee Niraj Kumar, s/o Sutu Mandal), r/o Village-Saljora Bandri, PO-Jokela, PS-Saraiyahat, District-Dumka.
6. Ravi Kumar, s/o Raj Kumar Mandal (Brother of arrestee Rupak Kumar Mandal), r/o Village-Saljora Bandri, PO-Jokela, PS-Saraiyahat, District-Dumka.

... Petitioners

Versus

1. The State of Jharkhand through the Home Secretary AT Project Building, Dhurwa, PO & PS-Dhurwa, District-Ranchi (Jharkhand).
2. Superintendent of Police, Dumka, AT, PO, PS & District-Dumka (Jharkhand).
3. Officer-in-Charge, Saraiyahat Police Station, AT, PO & PS-Saraiyahat, District-Dumka (Jharkhand).
4. Station House Officer, Hazratganj Police Station, AT PO & PS-Hazratganj, Lucknow, District-Lucknow (UP).
5. State of Uttar Pradesh through its Home Secretary, officiating at Lal Bahadur Shashtri Bhawan, AT PO & PS-Sarojni Naidu Marg, District-Lucknow (UP).

... Respondents

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Petitioners : Mr. Amarendra Kumar, Advocate
Mr. Sanjay Kumar Saraswat, Advocate
For the State : Ms. Shivani Kapoor, AC to SC-II

Order No.7/Dated: 21st September 2022

Six persons have approached this Court with a prayer to issue a writ of habeas corpus directing the officer-in-charge of Saraiyahat PS, who is the respondent no.3, to produce their son/brother/uncle who were illegally handed over by the respondent no. 3 to the police of Hazratganj PS at Lucknow in the State of Uttar Pradesh.

2. The prayer made in the writ petition reads as under:

“1. That, in the instant writ of Habeas Corpus the Petitioners pray for the immediate release of their aforementioned relatives (detenue) illegally arrested by the police officials of Saraiyahat Police Station of Dumka District (Respondent no.3) and handed over to police officials of Hazratganj Police Station, Lukhnow (UP) (Respondent no.4) and as per last information they are presently kept in some unknown place to petitioner at Uttar Pradesh.

And/Or

For issuance of further writ(s)/order(s)/direction(s) as your Lordships may deem fit and proper in the facts and circumstances disclosed in this case.”

3. The petitioners have stated that in the night of 2nd August 2020 a raid was conducted in their house by a team of police officials of Saraiyahat PS and their relatives, namely, Yoganand Prasad, Harihar Mandal, Pramod Kumar, Rahul Arya, Niraj Kumar and Rupak Kumar Mandal were arrested. The petitioners have alleged that at the time of arrest of the aforesaid persons any detail about the crime committed by them or a case registered against them was not disclosed to their family members. The petitioners further state that on enquiry they could know that altogether nine persons including their aforesaid six relatives were arrested at the instance of Suresh Giri who is posted as Deputy Superintendent of Police in Cyber Crime Cell at Lucknow in connection to Crime No. 174 of 2020 registered at Hazratganj PS for the offences under sections 419, 420, 467, 468, 471 and 411 of the Indian Penal Code and sections 66/66-C of the Information Technology Act.

4. The petitioners have provided details of the crime registered against the aforesaid persons by producing GD No. 044 dated 6th August 2020 and Crime No. 174 of 2020. It is stated that Rs. 3 Lakhs in cash was recovered from the accused persons which included Rs.90,000/- on personal search of Rupak Kumar Mandal. The writ averments further indicate that the bail applications filed on behalf of the accused persons were dismissed by the Court of Sessions at Lucknow vide order dated 6th October 2020.

5. Mr. Amarendra Kumar, the learned counsel for the petitioners submits that in complete violation of the statutory

provisions under the Code of Criminal Procedure the aforesaid six persons were arrested by Saraiyahat police and later on handed over to Hazratganj PS. The learned counsel for the petitioners relies on paragraph no.3 of the judgment in “*Bhim Singh, MLA v. State of J. & K. & Ors.*” AIR 1986 SC 494 to submit that in the circumstances of the case this Court may issue a writ of habeas corpus for release of the aforesaid six accused persons who were illegally arrested by Saraiyahat police.

6. In “*Bhim Singh, MLA*” the Hon’ble Supreme Court has observed as under:

“3. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah v. State of Bihar, (1983) 3 SCR 508: (AIR 1983 SC 1086) and Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs.50,000/- within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.”

7. Per contra, Ms. Shivani Kapoor, the learned AC to SC-II submits that the present habeas corpus petition is not maintainable inasmuch as the accused persons are in judicial custody by virtue of an order passed by the Court of competent jurisdiction.

8. To lay support to her submission, Ms. Shivani Kapoor, the learned AC to SC-II relies on the judgments in “*State of Maharashtra & Ors. v. Tasneem Rizwan Siddiquee*” (2018) 9 SCC 745 and W.P. (Cr.) No. 307 of 2020 titled “*Kerala Union of Working*

Journalists v. Union of India & Ors.”.

9. In “*Tasneem Rizwan Siddiquee*” the Hon'ble Supreme Court has held as under :

“10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the Jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar v. Jailor, Koneila Jail and Manubhai Ratilal Patel v. State of Gujarat*. It is no more *res integra*. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.”

10. In one of the first cases of habeas corpus, the Hon'ble Supreme Court held that in a habeas corpus proceeding the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceeding [refer, “*Ram Narayan Singh v. The State of Delhi & Ors.*” *AIR 1953 SC 277*]. On a glance at the writ averments it is plain and clear that the accused persons on whose behalf the present habeas corpus petition has been filed are in judicial custody and their bail applications have been dismissed by the Court of Sessions at Lucknow. From such facts which are within the knowledge of the petitioners, it can be safely inferred that the present habeas corpus petition is a ploy to get the accused persons released from judicial custody – a sort of shortcut method. There has been considerable delay on the part of the petitioners in approaching this Court and, moreover, it is not known in what manner the bail applications of the accused persons have been dealt with the Court concerned. In any case, the present habeas corpus petition cannot be a substitute or converted into any application for bail.

11. On a plain reading of the judgment in “*Bhim Singh*,

MLA”, it is manifest that the said judgment has been referred to by the learned counsel for the petitioners out of the context and it has no relevance in the facts and circumstances of the case. In “*Tasneem Rizwan Siddiquee*” the Hon'ble Supreme Court has held in no uncertain words that without challenging the order of remand a habeas corpus petition is not maintainable. The present case is a case of such nature. Neither the order of remand of the accused persons has been challenged on the ground that it was an illegal order nor have the petitioners made a prayer for award of compensation. In fact, the remand order by the Court at Lucknow cannot be challenged before this Court and for this reason the present habeas corpus petition is not maintainable in this Court.

12. The present habeas corpus petition is therefore without any substance and, accordingly, W.P.(Cr.)(H.B)(D.B) No. 40 of 2021 is dismissed.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

Amit/