

Supreme Court of India

Arvinder Singh Bagga vs State Of U.P on 16 November, 1993

Equivalent citations: 1994 SCC Supl. (1) 500 JT 1993 Supl., 594

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

ARVINDER SINGH BAGGA

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 16/11/1993

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 SCC Supl. (1) 500 JT 1993 Supl. 594

1993 SCALE (4) 418

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- By this petition under Article 32 of the Constitution of India, the petitioner sought a writ in the nature of habeas corpus to produce Smt Nidhi Bagga Nidhi Khandelwal w/o Charanjit Singh Bagga.

2. Nidhi Khandelwal and Charanjit Singh Bagga got married on July 16, 1993 by performing Hindu rites at Arya Samaj Mandir, Arya Nagar, Bhoor, Distt. Bareilly, Uttar Pradesh. That marriage was not acceptable to the family of Nidhi Khandelwal. Therefore, on July 17, 1993 an FIR was lodged with Police Station Prem Nagar, Bareilly. The case was registered as Case No. 635 of 1993 under Sections 363/366/506 IPC. After the registration of case, the entire family of the husband was taken into custody including minor girls aged 10 and 15 1/2 years. While the female members were released, the male members continued to be in detention. Smt Nidhi Bagga continued to be held by the police and illegally detained.

3. Though a writ petition was filed before the High Court of Allahabad under Article 226 of the Constitution of India, on account of the lawyers strike, the Allahabad High Court did not function. This necessitated the cousin of Charanjit Singh Bagga to move this Court under Article 32 of the Constitution of India.

4. On August 3, 1993, the following order was passed by this Court "We have heard learned counsel on both sides. At the time the petition was moved, the girl was in police custody. She has since been released. But, we are afraid, this cannot be the end of the matter. The writ petition shall continue as one for qualified habeas corpus for examining the legality of the detention for determining whether the petitioner is entitled to be + Under Article 32 of the Constitution of India compensated for the illegal detention as a public law remedy for violation of her Fundamental Rights under Article 21 of the Constitution, quite apart from criminal or civil liability which may be pursued in the ordinary course.

The respondents are directed to file a counter-affidavit within two weeks.

At the request of Mr R.S. Sodhi, learned counsel for the petitioner, notice against respondent 3 is discharged."

5. In obedience to this order, the Station House Officer (J.C. Upadhyaya) has filed a counter-affidavit strongly denying that Mrs Nidhi Khandelwal alias Nidhi Bagga was ever arrested or detained by the police, much less illegally. On July 17, 1993 Vikas Khandelwal brother of Nidhi Khandelwal lodged an FIR for offences punishable under Sections 363/366 IPC alleging that Charanjit Singh alias Channi had kidnapped/abducted his minor sister Nidhi aged 16 years with the connivance of other named co-accused persons. On the basis of that FIR, Case No. 635 of 1993 was registered at Police Station Prem Nagar on July 17, 1993 against various persons including Charanjit Singh Bagga. During investigation, the abducted girl Mrs Nidhi was recovered by the police of Prem Nagar on July 24, 1993 at 4.30 p.m. from Bareilly Junction Railway Station in the company of two accused persons and they were brought to the Police Station, Prem Nagar, Bareilly. The accused persons were produced before the Magistrate who remanded them to judicial custody on July 25, 1993.

6. Soon thereafter,, Mrs Nidhi was brought to the Police Station Prem Nagar on July 24, 1993 at 5.30 p.m., her mother Smt Seema Khandelwal was informed of her recovery. Her mother and brother came to the police station. Mrs Nidhi had to be medically examined for ascertaining her age. Meanwhile, it was noticed that lot of people belonging to Sikh community had gathered around the police station. There was reasonable apprehension that the girl might be snatched and forcibly taken away by the people of Sikh community. Therefore, it was considered necessary and proper that she be allowed to stay in Police Station Prem Nagar along with her mother. This was agreed to by both the mother and brother. On the next day i.e. on July 25, 1993, Nidhi was sent for radiological examination. Since it was a Sunday, the Radiology Department was not working. So, she was brought back to the police station. Thereafter, on July 26, 1993 she was sent for radiological examination. All these are mentioned in G.D. reports. Then Nidhi came back to police station after radiological examination with her mother and lady constable who had escorted her to the district

hospital.

7. On July 27, 1993, she was produced before IInd A.C.J.M., Bareilly for recording her statement under Section 164 CrPC. Her statement was not recorded since the situation outside the court was tense. There was apprehension of breach of peace. The Magistrate directed that she be produced on July 30, 1993. Under these circumstances, she was sent to Nari Niketan, Bareilly.

8. On July 30, 1993, after perusal of preliminary X-ray report, the Magistrate ordered the release of four accused persons namely Iqbal Singh, Amarjeet Singh, Rajender Singh and Charanjit alias Channi on their furnishing personal bonds. They were accordingly, released on the same day.

9. The arrest of these persons had to be made because a cognizable offence was alleged.

10. In view of above, it is denied that there was any illegal detention of anyone. Mrs Nidhi was taken for radiological examination promptly. The allegation of alleged detention and harassment are totally false and denied.

11. A rejoinder has been filed by Mrs Nidhi who would describe as to how she and her husband were taken into custody and were taken to Hotel Prayag. While in the police station, she was threatened by Sub-Inspector Narinder Pal Singh and SHO J.C. Upadhyaya and SSI Sukhpal Singh. She was directed to implicate her husband and his family to the effect that she was abducted and forcibly married thereafter. She was made to sleep on the floor in the office of Station House Officer, Police Station Prem Nagar all by herself. However, she was allowed to have food brought by her mother. She further states that before she was taken to hospital, Sub-Inspector Narinder Pal Singh, Station House Officer J.C. Upadhyaya and SSI Sukhpal Singh, turn by turn abused and jostled her around the room threatening to cause her injuries if she did not write down the note they wished to dictate. SSI Sukhpal Singh went to the extent of using his 'danda' on her legs and poking it in her stomach. This harassment continued in spite of her telling them that she had married of her own free will. During her stay in the police station, a lady constable was deputed to guard her.

12. On the morning of July 26, 1993, SSI Sukhpal Singh along with Station House Officer J.C. Upadhyaya began using foul language and making threatening gestures intimidating her to write a dictated note. Only when SSI Sukhpal Singh once again hit her with a danda on her legs and made threatening gestures aiming his danda at her head, upon which she became petrified and wrote in her own hand whatever was dictated to her by J.C. Upadhyaya, Station House Officer, P.S. Prem Nagar. Likewise, she alleges harassment throughout her stay in police station. She further alleges that J.C. Upadhyaya, Station House Officer threatened her that even if the marriage was declared valid by court, he would make her life miserable.

13. Having regard to these allegations and counter- allegations, we think before we arrive at a conclusion, it is highly desirable to call for a report from the District Judge, Bareilly who will make a thorough enquiry of all the persons. Accordingly, we direct that he shall submit a report within eight weeks from the date of the receipt of this order.