

Court No. - 10

Case :- HABEAS CORPUS WRIT PETITION No. - 353 of 2023

Petitioner :- Javed Khan Thru. His Brother Jamshed Khan

Respondent :- State Of U.P. Thru. Addl. Secy. Prison Civil Sectt. Lko And Others

Counsel for Petitioner :- Karuna Kant Gupta

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

Heard learned counsel for the petitioner, learned A.G.A. for the State/respondents and perused the record.

This Habeas Corpus petition has been filed with the following main prayers :-

"(i) Issue a writ, order or direction in the nature of Habeas Corpus to declare the detention of the petitioner as illegal, unconstitutional and direct the opposite parties to produce the person of the petitioner before this Hon'ble Court and set him free from their custody.

(ii) Issue a writ order or direction in the nature of Habeas Corpus or of any appropriate nature to the opposite parties expeditiously decide the representation dated 29.08.2023 filed by the petitioner contained as **Annexure No.1** to this writ petition.

(iii) Issue a writ order or direction in the nature of Habeas Corpus to take further steps in compliance of order dated 15.09.2023 passed by Her Excellency Governor and set the petitioner free from their prison."

Learned A.G.A. has raised a preliminary objection regarding the maintainability of this writ petition as habeas corpus because the detention of the petitioner is not illegal.

Learned A.G.A. for the State/respondents has pointed out from the judgment and order dated 08.02.2019, passed in Criminal Appeal No.1099/2008 (Javed Khan Vs. State of U.P.) that the court has upheld the judgment and order of the trial court and dismissed the appeal but had given the benefit of Section 432 Cr.P.C. keeping in view the long incarceration of the appellant

and had issued direction to the Jail Superintendent to send a proposal for remission of the the sentence of the appellant to the appropriate authority. Thereafter, the petitioner submitted a representation which has been rejected by an order dated 03.03.2020, a copy of which has been filed as Annexure no.4 to the writ petition. It has also been pointed out that the petitioner has not challenged the order dated 03.03.2020. Learned counsel for the petitioner has submitted that the Habeas Corpus petition is maintainable in view of the law laid by Hon'ble Supreme Court in the case of ***Raj Kumar Vs. State of U.P. (2023) SC AIR Online 226, decided on 06.02.2023.***

Learned A.G.A. has submitted instructions dated 6th November, 2023 sent by Senior Superintendent, Central Jail, Bareilly wherein similar statement has been made.

This Court is of the considered opinion that the petitioner has to challenge the order dated 3rd March, 2023 if he is so aggrieved by by the alleged pick and chose policy of the State Government.

The Habeas Corpus petition is not maintainable. Accordingly, it is hereby **dismissed.**

Order Date :- 7.11.2023

ML/-