

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8641 of 2023

Petitioner :- Ubaidurrahman

Respondent :- Union Of India Thru. Secy. Ministry Of Home Affairs And Others

Counsel for Petitioner :- Arun Kumar,Ahsan Ahmad,Shiv Poojan Verma

Counsel for Respondent :- A.S.G.I.,Shikha Sinha

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

Heard learned counsel for petitioner, Shri Varun Pandey, learned counsel for respondent no.1 and Ms. Shikha Sinha, learned counsel for respondent nos.2 and 3.

This writ petition has been filed with the following prayers:-

"a: issue a writ order or direction to Command the respondents that they do not unnecessarily drag the petitioner in the case RC31/2022/NIA/DLI about which the petitioner knows nothing.

b issue a writ order or direction to direct the first respondent to take appropriate legal action against the 2nd and 3rd respondents for causing harassment of the petitioner.

And further be pleased to direct that statements of petitioner under sec 164 of CrP.C be re-recorded in presence of the advocate of petitioner before Magistrate. Or pass any other order or direction in favour of the petitioner which this Honible Court may deems fit and proper under the facts and circumstances of the case."

It has been submitted by learned counsel for the petitioner that the petitioner is running a stationary shop at Duariyaganj,

District Siddhartha Nagar, U.P. and residing in village Babhani Mafi. On 11.10.2023 at 4.15 a.m., the officials of the NIA along with local police raided his house. They continued to search the house till 11 a.m. No papers relating to search and seizure were shown. The petitioner was pressurized to become a witness in Case No. RC 31/2022/NIA/DLI, being investigated by the NIA and he was also threatened that in case he refused to become a prosecution witness, he will be implicated in a false case and sent to jail. On the same day, respondent no.3 issued notice under Section 160 of the Cr.P.C. and the petitioner visited the NIA police station at Lucknow on 13.10.2023. The petitioner was forced to confess that he is a member of banned organization named SIMI as some material relating to SIMI had been recovered from his house and he was threatened that he would be prosecuted under sections of the Unlawful Activities (Prevention) Act, 1969 and sent to jail. The NIA also seized his mobile phone and put him in lockup and after three hours he was given back his mobile phone and allowed to make a phone call to his wife. The petitioner was again forced to visit the NIA police station at Lucknow on 14.10.2023 and he was abused by the Superintendent of Police, NIA, the Inspector, NIA, the Deputy Superintendent of Police, NIA and also the Deputy Inspector General, NIA tortured and abused the petitioner. He was also abused and forced to be a witness in a Case No. RC 31/2022/NIA/DLI. He was also orally directed to visit NIA police station on 16.10.2023. The necessary ingredients of Section 160 of the Cr.P.C. were not followed and the petitioner had been compelled to make a statement before the Magistrate concerned in camera implicating other members of the alleged banned organization.

Therefore it has been argued that the aforecited prayers have been made in this writ petition.

Learned counsel for opposite party nos.2 and 3 has stated that the entire procedure as prescribed under law for search and seizure was followed because some persons namely, Atharva Parvez, Mohd. Jalauddin and Anwar Rasheed along with 23 other persons were implicated for Anti National Activities and FIR had been lodged in Patna. SIMI is a banned terrorist organization formed in 1977 and banned by Indian Government in 2001. It is further submitted that the petitioner's house was raided on reliable information being received that he acts in collusion with Anwar Rasheed who is already charge sheeted. Letter head/ letter pad of SIMI, संघर्ष यात्रा के 50 वर्ष and several other incriminating articles were found at petitioner's house which were seized and he was given notice under Section 160 Cr.P.C. for recording of the statement and was made a protected witness whose statement was taken in camera so that his identity could not be disclosed and his life may be protected. It has been argued by Ms. Shikha Sinha, learned counsel for respondent nos.2 and 3 that the trial Court is already seized of the matter and petitioner's statement having been recorded under Section 164 Cr.P.C., he has full opportunity during the course of trial to make whatever statement he likes before the Court concerned.

This Court having heard learned counsel for the parties finds no good ground to show interference.

The Writ Petition is, accordingly, **dismissed**.

Order Date :- 8.11.2023

Arnima