

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Writ Petition No.813 of 2012 (O&M)

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Date of decision:2.2.2015

Harpal Kaur and another

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

Present: Mr. R.S. Bains, Advocate for the petitioners.

Mr. Amarinder Singh Klar, Assistant Advocate General,
Punjab for the respondent-State.

Mr. Onkar Singh, Advocate for respondent No.4.

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Inderjit Singh, J.

This criminal writ petition has been filed under Article 226 of the Constitution of India praying for issuance of writ of Habeas Corpus for the release of detainee Sukhwinder Singh son of Hoshiar Singh, who has been abducted by respondent police officials from Bus Stand, Banur, District Patiala on 23.7.2010, even when the said detainee has not committed any offence and is not wanted in any offence and he has been illegally detained by the Police only due to influence of Baba Ranjit Singh resident of Parmeshwar Dwar Gurudwara, Sekhopur, District Patiala, because he has an enmity with detainee Sukhwinder Singh and his family members and the Police and Baba Ranjit Singh are torturing him for so many days. It has been further prayed for appointment of Warrant

Officer, so that the detainee, who has been illegally detained by Police officials of CIA Staff, Patiala, may be produced before this Court by the Warrant Officer after search of the place or at any other place, which is pointed out by the petitioner.

Notice of motion has been issued in this case.

Mr. A.S. Klar, learned Assistant Advocate General, Punjab has appeared on behalf of the respondent-State and Mr. Onkar Singh, learned Advocate has appeared for respondent No.4 and contested this petition. Replies have also been filed in this case by the respondents.

I have heard learned counsel for the petitioners and learned Deputy Advocate General, Punjab for the respondent-State as well as learned counsel for respondent No.4 and have gone through the record.

As per the reply filed by the official respondents, the allegations levelled in the writ petition were denied and it is stated that the petitioners are trying their best to mislead the Court. It is also the case of the respondents that the allegations of torture and illegal detention were found false during the inquiry got conducted by DSP, Sangrur through SDM, Sangrur. As per the reply filed by the State, it has been stated that on 30.4.2012 at about 4.00 a.m., ASI Nirmal Singh, In-charge, Police Post Channo (Kala Jhar), Police Station Bhawanigarh, while on patrolling and checking of suspected persons, noticed a person standing under the shed of tea shops at Bus Stand, Channo in suspicious condition. He was apprehended, who disclosed his name firstly, as Sukha resident of Balial and secondly as Bhalwan resident of Cheema and then thirdly as

Sukhwinder Singh alias Sukha alias Bhalwan. His personal search was conducted and a 'Karad' (knife) from his pocket was recovered. Currency notes of ₹400/- were recovered from right pocket of his shirt. He was arrested under Section 41.1(109) Cr.P.C. and then produced before the Inspector/S.H.O., Police Station Bhawanigarh, who verified the facts and having found the same to be correct, said Sukhwinder Singh was arrested under Section 41.2(109) Cr.P.C. and locked up in Police Station Bhawanigarh. Then Calendra under Section 41.2(109) Cr.P.C. was prepared and he was got medically examined from Civil Hospital, Bhawanigarh and Dr. G.S. Mann, Medical Officer medically examined him. Thereafter, he was produced before the Executive Magistrate, Sangrur on the same day i.e. 30.4.2012 and the learned Magistrate sent him to District Jail, Sangrur upto 4.5.2012 and he was lodged in the District Jail, Sangrur in compliance with the order.

At the time of arguments, it was admitted fact that the detenu has already been released and not in detention. The learned counsel for the respondents placed reliance on the judgment of Hon'ble Supreme Court in Vinay Shukla v. Union of India and others, (2007) 2 SCC 464, in which it is held that at the time of hearing, the petitioner was not in any kind of detention or unlawful restraint, therefore, the Court declined to entertain petition under Article 32 of the Constitution of India. It is also held that as regards awarding damages etc., the allegations made by the petitioner are entirely factual in nature, which could be established only by recording oral evidence. The petitioner was left to seek such legal

remedy as available to him in law for claiming damages on ground of his alleged abduction and confinement and the writ petition was dismissed.

On the same point, learned counsel for the respondents further placed reliance on the judgment of Hon'ble Supreme Court in Mohit Chandra Saha v. The District Magistrate, 24, Parganas Alipore, Calcutta-27 and others, AIR 1974 SC 2287. In this case also, it was held that release of detinue pending hearing of petition renders the petition infructuous.

In the present case, the only relief claimed for issuance of a writ of Habeas Corpus is to release the detinue. As the detinue was not in illegal detention at the time of hearing of the arguments, therefore, this petition has become infructuous.

As regards, the factual position, whether the detinue was kept in illegal custody as alleged by him, this factual position is to be proved by producing the evidence etc. The petitioners are at liberty to avail alternative remedy, but this petition under Article 226 of the Constitution of India for issuance of writ of Habeas Corpus has become infructuous, therefore, the same is dismissed.

February 2, 2015.

(Inderjit Singh)
Judge

hsp