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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-1553-2014 [O&M]

Date of Decision : October 21st, 2015

Gurcharan Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr.Navkiran Singh, Advocate,
for the petitioner.

Mr. Varun Sharma, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

This Criminal Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ of Habeas Corpus, was filed by petitioner - Gurcharan Singh, seeking directions to respondents No. 2 and 3, i.e., District Magistrate, Jalandhar and Senior Superintendent of Police [Rural], District Jalandhar to release the detenu – Gurnam Singh son of the petitioner and to set him free. Petitioner took the plea that his son, Gurnam Singh is in illegal custody of respondents No. 4 to 6. A complaint was filed with Punjab Human Rights Commission. The petitioner apprehended threat to the life and liberty of detenu – Gurnam Singh and hence, filed the present writ petition.

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2. On this, vide order dated 13.10.2014, a Warrant Officer was appointed by this Court and as per the report submitted by Shri Jaswant Singh, Warrant Officer, Gurnam Singh was not traceable.

3. During the pendency of the writ petition, the petitioner filed Criminal Misc. No.326 of 2014 before this Court for issuance of a show cause notice to the Senior Superintendent of Police, Shaheed Bhagat Singh Nagar [for short, "SBS Nagar"] as the whereabouts of the detenu could not be made known and on account of non-registration of the FIR, on the basis of representation dated 15.10.2014.

4. Another application bearing Criminal Misc. No.25 of 2015 was filed under Section 482 Cr.P.C. for marking a judicial enquiry to the Chief Judicial Magistrate, SBS Nagar to enquire into the allegations of abduction, illegal detention of 9 days and false implication of son of the petitioner.

5. Learned counsel for the petitioner submitted that at the time of visit of the Warrant Officer appointed by this Court vide order dated 13.10.2014, the detenu was required to be searched from the premises of Police Station, Phillaur, falling in Jalandhar district, Police Post Lasara or CIA Staff Jalandhar or any other place in the vicinity of said areas. Application was filed before Senior Superintendent of Police, SBS Nagar, for registration of case against Jagtar Singh, ASI. Thereafter, the police officials of Police Station Maqsudan, District Jalandhar [Rural] falsely implicated the son of the petitioner in case bearing FIR No. 213 dated 22.10.2014 under Section 25 of the Arms Act as he was allegedly found to be in possession of a country-made pistol.

6. Learned counsel for the petitioner further submitted that the eye-

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witnesses are available with him who are ready to depose before the Judicial Officer regarding the abduction of his son, namely, Gurnam Singh on 13.10.2014. According to him, Gurnam Singh has given the details of his abduction and after that he was released on bail. That way, he was in illegal detention of 9 days and was tortured and has been falsely implicated in the case under the Arms Act. He prayed that the entire matter be probed by a Judicial Officer and as such, enquiry be entrusted to Chief Judicial Magistrate, SBS Nagar.

7. Learned counsel for the petitioner further submitted in such like cases, as per the verdict from Hon`ble Supreme Court in **Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and Ors, 1994[1] RCR [Criminal] 18** and **Arvinder Singh Bagga Vs. State of U.P. and others, 1995 SCC [Crl.] 1156**, the Court is having ample power to order judicial enquiry so as to know the truth regarding illegal detention or otherwise.

8. Respondent-State in its reply have taken the plea that on the basis of complaint dated 15.10.2014 made by the petitioner to the Senior Superintendent of Police, SBS Nagar for tracing out his missing son, Gurnam Singh. On enquiry, the police of Police Post, Lasara, Police Station Phillaur, District Jalandhar, intimated that the police never conducted any raid at the house of the petitioner in village Lasara nor at the shop of Gurnam Singh, son of the petitioner in the area of Village Urapar, Police Station Sadar, Nawanshehr. As per reply filed by the State, Gurnam Singh was never picked up by the police nor he was warranted in any case. However, it was revealed during enquiry that Gurnam Singh, son of the petitioner, was confined in Modern Jail, Kapurthala in case bearing FIR No. 213 dated 22.10.2014 under Section 25 of the Arms Act,

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registered against him at Police Station – Maqsoodan, District Jalandhar [Rural]. More so, Gurnam Singh son of the petitioner was involved in criminal activities in the following cases:-

Sr.No.	Case	Under Sections	Police Station
1	FIR No. 120 dated 20.9.2012	307/324 and 34 IPC	Phillaur
2	FIR No. 207 dated 13.11.2014	324/452/307/326/148 and 149 IPC	Phillaur
3	FIR No. 128 dated 10.9.2010	336/195/193/34/120-B IPC and Section 25 of Arms Act.	Banga, [SBS Nagar]
4	FIR No. 75 dated 5.9.2010	25 of Arms Act	Sadar, Nawanshahar
5	FIR No. 42 dated 29.3.2010	399 and 402 IPC and Section 25 of Arms Act	Kharar, District SAS Nagar Mohali
6	FIR No. 20 dated 28.1.2014	323, 324, 148 and 149 IPC	Phillaur, District Jalandhar [Rural]

9. State further took the plea that the allegations were unfounded and unsubstantiated and no ground is made out for marking any enquiry in the matter to the Chief Judicial Magistrate, SBS Nagar or any other authority.

10. While replying on merits, respondent-State took a similar plea and prayed that the application seeking marking of enquiry to the Chief Judicial Magistrate, SBS Nagar or any other authority is without any merit and the same be dismissed.

11. Having considered the above facts and after going through the ratio of law enunciated in **Smt. Nilabati Behera alias Lalita Behera's case [supra]** and **Arvinder Singh Bagga's case [supra]**, this Court is of the considered view that no doubt, the Court has ample power to take effective steps to go deep into the illegal detention of any citizen of the country, but at the same time, the Court must be refrained from marking any enquiry just on the asking of a party or without there being any basis.

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12 In the case in hand, on filing of the present writ petition by Gurcharan Singh, a Warrant Officer was appointed by this Court immediately. As per the report of Shri Jaswant Singh, Warrant Officer, dated 14.10.2014, Gurnam Singh was not found or was not detained or picked up by Jagtar Singh, ASI, Incharge of Police Post, Lasara. The facts of the present case are otherwise. Gurnam Singh, son of the petitioner, was found to be involved in criminal case for which FIR No. 213 dated 22.10.2014 under Section 25 of the Arms Act, was registered against him at Police Station – Maqsoodan, District Jalandhar [Rural]. Moreso, Gurnam Singh is involved in six other criminal cases for which separate FIRs, as detailed in para No.8 of this judgment, have been registered against him. These cases were registered at different Police Stations as out of these six cases, three cases relate to Police Station Phiallur; one case relates to Police Station Banga; one case relates to Police Station Sadar, Nawanshahar and another case of Police Station Kharar, District Mohali.

13. Identical matter was before Hon`ble Supreme Court in **State of West Bengal and Ors. Vs. The Committee for Protection of Democratic Rights West Bengals & Ors., 2010 [2] JT 352** and the Hon`ble Supreme Court observed that while dealing with such matters, certain self-imposed limitations should be born in mind. Although, no inflexible guidelines can be laid down to decide whether or not such power should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. The said power should be exercised sparingly, cautiously and in exceptional situations

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where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. While exercising such powers the Courts must bear in mind certain self-imposed limitations. The very plenitude of the power requires great caution in its exercise.

14. As regards to plea taken by learned counsel for the petitioner that Gurnam Singh, son of the petitioner has been falsely implicated in case bearing FIR No. 213 dated 22.10.2014 under Section 25 of the Arms Act, registered at Police Station – Maqsoodan, District Jalandhar [Rural], that matter is within the purview of trial by the Judicial Court and there should not be any apprehension in the mind of the petitioner regarding passing of judgment of conviction or otherwise on the basis of some falsity.

15. In view of the above, the present case is not such a case calling for entrustment of judicial enquiry. The petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 21st, 2015
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