

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

-:-

Crl. Writ Petition No. 1738 of 2014

Date of decision: 02.02.2015

Tarsem Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-:-

Present: Mr. Vivek Salathia, Advocate
for the petitioner

Mr. Ankur Jain, AAG, Punjab
for the respondent State

-:-

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

Rekha Mittal, J.

The petitioner has filed the instant petition under Article 226 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus for releasing husband of the petitioner namely Buta Singh, illegally confined in Central Jail, Amritsar by respondent No. 3.

Counsel for the petitioner contends that Buta Singh (detenue) is facing criminal prosecution in numerous cases in which he was on bail. Proceedings under Section 110 of the Code of Criminal Procedure (in short, 'Cr.P.C') were initiated against him vide rapt No. 24 dated 09.12.2013, an inquiry was conducted in accordance with the procedure laid down in Section 116 Cr.P.C and the order was passed under Section 117 Cr.P.C whereby Buta Singh was directed to furnish security in the sum of Rs.4,00,000.00 for his good behaviour for a period of one year vide order dated 24.02.2014. Buta Singh was booked in FIR No. 93 dated 01.09.2014

for offence punishable under Section 61 of the Punjab Excise Act, 1914. A report was submitted by Station House Officer of the concerned police station that since Buta Singh had violated terms and conditions of the bond, recovery of the bond amount may be effected from Buta Singh and his surety. It is argued with vehemence that respondent No. 3 while exercising power of Executive Magistrate, without issuing any notice and providing an opportunity of hearing to the detainee, has passed the order dated 18.10.2014 for keeping Buta Singh in supervision (*Nazarbandi*) in Central Jail, Amritsar by invoking Section 122(1)(b) Cr.P.C for a period of five months and twenty days, the remaining period of bond furnished by him. It is further argued that detention of Buta Singh by the Executive authority without his conviction by a competent Court of law is unwarranted and the detainee is liable to be released from illegal custody.

Counsel for the respondent State, on the other hand, would submit that Buta Singh was involved in 16 criminal cases and has already been convicted in ten cases and is facing proceedings in three cases and the case registered on 01.09.2014 is under investigation. He has conceded to factual assertions that proceedings under Section 110 Cr.P.C. were initiated against Buta Singh and he was directed to furnish bond for a sum of Rs.4,00,000.00 along with one surety bond for a period of one year with an undertaking to maintain good conduct during that period with effect from 24.02.2014. Buta Singh was arrested in FIR No. 93 dated 01.09.2014 registered in Police Station Maqbulpura, Amritsar for commission of offence punishable under Section 61 of the Punjab Excise Act, 1914. On the basis of report submitted by the SHO of concerned Police Station, Buta Singh was personally heard in the matter and thereafter the order dated

18.10.2014 was passed in view of the provisions of Section 122(1)(b) Cr.P.C. It is argued with vehemence that said order was challenged by Buta Singh before the Court of Sessions by way of an appeal which was dismissed by the Sessions Judge, Amritsar on 12.01.2015. He has also challenged the said order before the District Magistrate-cum- Commissioner of Police, Amritsar, by filing a petition under Section 123 Cr.P.C and proceedings are pending before the said authority. It is argued with vehemence that the petitioner intentionally concealed the factum of proceedings pending before different authorities and she is guilty of approaching the Court with soiled hands as she raised a fake plea that her husband was detained by respondent No. 3 without passing any order or supplying a copy of said order to the detainee. It is further argued that if Buta Singh had not been supplied a copy of the order dated 18.10.2014, there was no occasion for him to challenge said order before the Court of Sessions or District Magistrate -cum- Commissioner of Police, Amritsar. It is argued with vehemence that the proceedings initiated before this Court are nothing but abuse and misuse of process of law and are liable to be dismissed with costs.

I have heard counsel for the parties and perused the records.

A bare reading of the allegations set up in the petition would make it evident that the primary grievance of the petitioner is that her husband has been detained by respondent No. 3 without passing an order or supplying a copy thereof to the detainee or the petitioner. The order dated 18.10.2014 bears signatures of Buta Singh, the alleged detainee. The said order was challenged by the detainee, by filing an appeal which was instituted on 27.11.2014. Another petition has been filed before the District

Magistrate-cum-Commissioner of Police, Amritsar. It appears to the Court that the petitioner raised a false allegation that her husband has been detained without any order by respondent No. 3, indisputably empowered to exercise jurisdiction under Section 110 Cr.P.C. This apart, the petitioner is not competent to challenge the order dated 18.10.2014 passed by respondent No. 3 as she has not been authorized by Buta Singh to challenge the said order before this Court.

Buta Singh was directed to furnish a personal bond along with one surety in the sum of Rs.4,00,000.00 with a direction to keep good conduct for a period of one year vide order 14.02.2014 passed by the competent authority. There is no denial that before expiry of the bond period, Buta Singh was involved in FIR No. 93 dated 01.09.2014 registered in Police Station Maqbulpura, Amritsar for offence punishable under Section 61 of the Punjab Excise Act, 1914 and he was arrested in said case and produced before the Judicial Magistrate. The SHO of the concerned Police Station submitted a report on the basis whereof, respondent No. 3 initiated proceedings which culminated in the order dated 18.10.2014 passed in the presence of said Buta Singh. Section 122 Cr.P.C. provides for imprisonment in default of security. A relevant extract from Section 122(1) (b) Cr.P.C, germane in the context, is quoted thus:-

“122. Imprisonment in default of security.

(1) (a) xx xx

(b) If any person after having executed a bond with or without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or

successor-in-office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.”

The above extracted provision makes it crystal clear that if a person who has executed a bond with or without surety for keeping peace in pursuance of an order of a Magistrate under Section 117, is proved to have committed breach of bond, such Magistrate or successor in office is empowered to order that the person be arrested and detained in prison until the expiry of the period of bond and such order shall be in addition to any other punishment or forfeiture to which said person may be liable in accordance with law. However, the only mandate of law is that the Magistrate concerned has to record the grounds of such proof that person concerned has committed a breach of bond.

Keeping in view the allegation against Buta Singh who is admittedly booked in a criminal case for committing offence under the Punjab Excise Act, 1914, I do not find any merit in the contention of the petitioner that Buta Singh has been illegally detained by respondent No. 3, warranting issuance of writ, prayed for.

In view of what has been discussed here-in-above, finding no merit, the petition stands dismissed. No order as to costs.

(Rekha Mittal)
Judge

02.02.2015
mohan

