

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and order: 8th July 2015

+ W.P.(CRL) 1285/2015
MUBARIK KHAN

..... Petitioner

Through: Mr. M.L. Chaudhary, Advocate

versus

STATE OF (NCT) DELHI & ORS

..... Respondents

Through: Ms. Kamana Vohara, Additional
Standing Counsel with Inspector
Rajender Bhatia, Sub-Inspector
Ranjit Singh, Police Station Neb
Sarai, Delhi
Mr. M. Qayamuddin, Advocate for
Respondent No. 4.
Mr. S.P. Kaushal, Advocate for
Respondent No. 5 and 6.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

08.07.2015

%

KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Article 226 of the Constitution of India, the petitioner invokes the writ jurisdiction of this Court and seeks direction in the nature of habeas corpus for securing presence of

Sh.Ibrahim Khan (Grand father of the petitioner).

2. The case of the petitioner as set up in the instant petition is that on 8.5.2015, respondent No. 4 alongwith respondent Nos. 5 to 7 came to the petitioner's house i.e. at 966/23, Block L-II, Sangam Vihar, New Delhi on the pretext that they had come to know the well being of the petitioner's grandfather and taking benefit of the absence of the petitioner, respondent No. 4 made an expression to the grandfather of the petitioner that the petitioner is standing at Max Hospital, Saket and has asked him to bring him to the hospital for his treatment. Believing the statement made by respondent No.4, the grandfather of the petitioner agreed to accompany them, but these respondents, instead of taking him to the Max hospital, took him to their village i.e. Village Dhauz, P.S. Sector 55, Faridabad, Haryana. After having learnt of this, the petitioner reached Village Dhauz to make inquiries from respondent Nos. 4 to 7 but these respondents misbehaved with him and threw him out. Even after putting great efforts, respondent Nos. 4 to 7 hardly allowed the petitioner to talk to his grandfather and in fact threatened him not to come to the village again. The petitioner, somehow, met his grandfather on 5.6.2015 and also had a telephonic interaction with his grandfather on 21.6.2015.

The petitioner's grandfather asked the petitioner to save him from the clutches of respondent No. 4 to 7. As per the petitioner, on 25.06.2015, the petitioner again visited the house of his father at Village Dhauz and tried to meet his grandfather but he came to know that his grandfather is not at the house of respondent No. 4 as they have shifted him to some unknown place. The grievance raised by the petitioner is that the respondent Nos. 4 to 7 have illegally detained his grandfather and have also shifted him to some unknown place. The petitioner also expressed his apprehension that respondent Nos. 4 to 7 can kill his grandfather at any time for the greed of his property.

3. The State has appeared on advance notice through Ms. Kamana Vohara, Additional Standing Counsel. Status report has been filed. In the status report, the State has stated that the grandfather of the petitioner Ibrahim Khan aged about 80 years was brought back to Delhi on 05.07.2015 from Village Dhauj, Sector 55, Faridabad, Haryana, pursuant to the registration of FIR No. 916/15 under Section 365/342 IPC, Police Station Neb Sarai, registered on the complaint filed by the petitioner. It is further stated that the grandfather of the petitioner was produced before the learned Metropolitan Magistrate, Saket Court, where his statement

under Section 164 of Cr. P.C. was recorded on 06.07.2015.

4. Referring to the statement of the grandfather of the petitioner recorded under Section 164 Cr. P.C., the State has stated in its report that Mr. Ibrahim Khan has levelled allegations against his real son – Shahabuddin and other relatives for taking him to his native village Dhauj, Faridabad on the pretext of meeting relatives and thereafter they did not allow him to come back to Delhi because of dispute over ancestral property amongst family members. It is further stated that the police has also arrested Shahbuddin S/o Rahim Khan R/o Vill. Rehna, PS Nuh, Distt. Mewat, Haryana and (2) Wahid Khan S/o Usman Khan R/o Vill & PO Dhauj, P.S. Sector 55, Faridabad on 06.07.2015 and they have been sent to judicial custody up to 21.07.2015. As per the State, so far as respondent Nos. 4 to 7 are concerned, they are all absconding.

5. Mr. M. Qayamuddin, Advocate appears on behalf of Respondent No. 4 and Mr. S.P. Kaushal, Advocate appears on behalf of Respondent Nos. 5 and 6. Both the counsel have seriously disputed the version of Mr. Ibrahim Khan given by him in his statement under Section 164 of Cr. P.C. counsel also submits that the petitioner was very well aware that his grandfather was staying with respondent No. 4.

6. Mr. Kaushal, learned counsel appearing for respondent Nos. 5 and 6 submits that respondent is in possession of various documents to show that the petitioner was well aware of the fact that his grandfather continued to stay at the residence of respondent No. 4 and he was consistently in touch with his grandfather. Mr. Ibrahim Khan, grandfather of the petitioner is present in Court.

7. Statement of Mr. Ibrahim Khan has already been recorded under Section 164 of Cr. P.C. There appear to be disputes relating to properties and any observation made by this Court on the merits of respective claims of the parties can cause prejudice to their rights, whether before the criminal Court or the civil Court. Therefore, we are not making any observations thereon.

8. The present petition is a habeas corpus petition and since the State has succeeded in securing the presence of grandfather of the petitioner before the Court and has also registered the FIR against the accused persons, therefore, so far as the present petition is concerned, the same can be disposed of after recording the satisfaction of the petitioner, regarding the presence of his grandfather in Court and also as per the version of Mr. Ibrahim Khan, he is now happily staying with the

petitioner, out of his own wish and desire. We also direct the area SHO to remain in constant touch with the petitioner and his grandfather, so that the rival disputes between the parties may not lead to suffering or any kind of annoyance to this old man.

9. Accordingly, the present petition is disposed of.

KAILASH GAMBHIR, J

P.S. TEJI, J

JULY 08, 2015

pkb