

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 235

Criminal Writ Petition No.1722 of 2015 (O & M)
Date of Decision: May 20, 2016

Gurcharan Singh & another

..... PETITIONERS

VERSUS

State of Punjab & others

..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. R.S. Bains, Advocate, for the petitioners.

Mr. J.S. Sekhon, Assistant Advocate General, Punjab.

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Jaspal Singh, J

1. Petitioners Gurcharan Singh and Harpreet Singh have preferred the instant petition under Article 226 of the Constitution seeking their release from illegal arrest in DDR No.27 dated November 20, 2015 registered at Police Station, Urban Estate, Patiala, under Section 107/151 Cr.P.C. and further, praying for quashing Kalandra submitted against them vide the aforesaid DDR as well as subsequent orders passed by the Sub Divisional Magistrate exercising powers of Executive Magistrate under

in judicial custody without conducting any enquiry as to truth of information as laid down under Section 116 Cr.P.C.

2. In pursuance of notice of motion, replies by way of affidavits of Varinderjeet Singh, PPS, DSP, City-2, Patiala (on behalf of respondent Nos.1, 3 & 5); Gurpal Singh Chahal, SDM, Patiala (on behalf of respondent No.2); and Bhupinderjeet Singh Virk, PPS, Superintendent, Central Jail, Patiala (on behalf of respondent No.4) have been filed.

3. Briefly stated the facts of the case are that Kalandra under Section 107/151 Cr.P.C. was presented on November 20, 2015 by SHO, Police Station, Urban Estate, Patiala in the court of SDM, Patiala alleging that petitioners are the near relative of Jagtar Singh Hawara, who is detained in Tihar Jail, Delhi. They are likely to create breach of peace in Punjab to give strength to the religious feelings of people due to recent activities of bad elements. On receipt of aforesaid Kalandra, they were directed to be released on bail on furnishing bail bonds to the tune of ₹ 20,000/- each. Since, they could not produce any surety, thus, they were sent to judicial custody vide order dated November 20, 2015 (Annexure R-1/T).

4. Subsequent thereto, on November 24, 2014, an application was moved by Nachattar Singh son of Hardev Singh, resident of village Zarikpur, Tehsil Ghanaur, District Patiala, for furnishing bail bonds of petitioners. Accordingly, file was taken up but since witnesses were not present alongwith surety, so Nachattar Singh was directed to produce the witnesses vide order dated November 24, 2015 (Annexure R-2). The requisite witnesses were produced by aforesaid Nachattar Singh on November 30, 2015. Accordingly, surety bonds were accepted and release warrants of petitioners were issued and sent to the Superintendent, Central

5. The main contention of learned counsel for the petitioners is that petitioners were illegally detained just being the relatives of Jagtar Singh Hawara, who was detained in Tihar Jail, Delhi. There was no apprehension of any breach of peace or to disturb the religious sentiments/feelings of the people of Punjab. Infact, SDM had no jurisdiction to ask them for furnishing of surety bonds for their release, especially in the circumstances that no enquiry was initiated or completed prior to passing of the said order. It was incumbent upon the SDM to first enquire into the matter and if the allegations are found to be established, only then he was competent to direct the petitioners to furnish surety. Thus, detention of petitioners from November 20, 2015 to November 30, 2015 i.e. for 10 days, was illegal, for which, the petitioners are entitled to compensation.

6. This court has given an anxious thought to the aforesaid contention(s) made by learned counsel for the petitioners but find the same to be of without any legal substance.

7. On receipt of Kalandra under Section 107/151 Cr.P.C., from SHO, Police Station, Urban Estate, Patiala, it was not possible for the SDM to conclude the entire enquiry within minutes or seconds. The petitioners were provided with an opportunity to furnish the surety bonds which they did not produce. They did not avail the remedy intentionally and as & when the surety bonds were furnished on behalf of petitioners, they were immediately released. The detention of petitioners cannot be termed to be either illegal or unwarranted, rather, it was on account of the fact that there was an apprehension of breach of peace and injury to the religious sentiments/feelings of the people of Punjab. There is no infirmity or illegality in the impugned orders or proceedings carried out by the learned

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed.

May 20, 2016
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(Jaspal Singh)
Judge