

Date of Decision : 06.04.2016

.....Petitioner

versus

....Respondent

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

M.M.S. BEDI, JUDGE (ORAL)

Davinder Singh has filed this criminal writ petition for issuance of a roving writ in the nature of habeas corpus for release of his father, Rattan Singh, from the illegal custody of the police officials of Police Station, Tarn Taran, District Tarn Taran including C.I.A. staff, Tarn Taran, alleging that a raid had been conducted on 31.05.2014 by respondent No. 4 - Inspector, Inderjit Singh and detained Rattan Singh in custody. The petitioner also alleged that he had come to learn that after the detention, his father had been involved in a case FIR No. 3 dated 03.01.2014 registered at Police Station City Tarn Taran, District Tarn Taran under Section 21 of NDPS Act.

Pursuant to an order dated 06.06.2014, passed by a Coordinate Bench of this Court (Amol Rattan Singh. J), in appointing a Warrant Officer, to raid at the places where the father of the petitioner had been illegally detained, a raid was conducted by a Warrant Officer deputed by this Court. Report was submitted to the effect that the father of the petitioner, named

Rattan Singh, was found confined in the lock-up with effect from 31.05.2014, as per the statement of Rattan Singh which was contradicted by ASI Kulwinder Singh, the duty officer, stating that Rattan Singh has been confined with effect from 8:30 PM/10:00 PM on 06.06.2014 and his arrest has been recorded in DDR No. 22 dated 06.06.2014 in FIR No. 3 dated 03.01.2014 under Section 21 of NDPS Act, registered against Rattan Singh and others.

A Coordinate Bench of this Court (Mehinder Singh Sullar.J.) had, on 06.10.2014, passed an order, requiring the Chief Judicial Magistrate, Tarn Taran to hold an inquiry by giving adequate opportunity to both the parties. A report has been received from the District and Sessions Judge, Amritsar to the effect that at the time of conducting raid on 06.06.2014, accused - Rattan Singh was in illegal custody, having been arrested with effect from 01.05.2014.

With the receipt of report of Chief Judicial Magistrate, Tarn Taran the inquiry officer and Rattan Singh being in custody, on the basis of recovery of 1 Kg of heroin and Tractor, on the basis of his statement recorded, while he was in custody, the habeas corpus petition has apparently outlived its utility but since the Chief Judicial Magistrate, Tarn Taran has submitted a report, pursuant to the inquiry conducted regarding *prima facie* illegal detention of the petitioners' father, it will not be appropriate to express any opinion regarding the date of arrest of Rattan Singh, as his trial is still pending for having got recovered 1 kg of heroin and Tractor, as per

his statement, under Section 27 of the Indian Evidence Act. Since, his bail application is pending before this Court, it will also not be judicially appropriate to express any opinion regarding his date of detention, lest, it should prejudice the prosecution agency or the accused, during the course of trial.

This Court is of the opinion that on the basis of the report of Chief Judicial Magistrate, Tarn Taran, it is open to the petitioner or Rattan Singh to take appropriate legal remedy to seek compensation for alleged illegal detention or to take appropriate remedy under Criminal Procedure Code for prosecution under relevant provisions of Indian Penal Code. The report of learned Chief Judicial Magistrate is not a judicial order, determining the culpability of the respondents but it gives a cause to the petitioner or the detainee to launch proceedings, civil or criminal, in accordance with the procedure of law by establishing the allegations that Rattan Singh had been illegally detained. The controversy regarding date of arrest of Rattan Singh in FIR No. 3 dated 03.01.2014, will also be a debatable issue during the trial, as such, it will not be appropriate for this Court to express any opinion regarding the actual date of arrest. Since, the inquiry has been conducted by following broad principles of rules of natural justice, while submitting a report dated 06.01.2015 *prima facie*, detention of Rattan Singh with effect from 06.06.2014 is, as claimed by the State, also a debatable issue. The inquiry report is sufficient enough to grant interim compensation to detainee Rattan Singh, subject to the final adjudication of

the controversy in the legal proceedings initiated by the aggrieved person or in the trial which is pending against Rattan Singh.

This petition is disposed of by directing the State of Punjab to provide interim compensation to Rattan Singh for his *prima facie* illegal detention to the tune of Rs. 30,000/- within a period of one month subject to final decision in any proceedings launched by Rattan Singh, for claiming damages. It will also be the right of Rattan Singh to avail the legal remedy under the criminal law, which is also left open. In case, any compensation is determined by any Court to be paid to Rattan Singh, the amount of Rs.30,000/- (symbolic compensation) shall be adjusted in that amount. In view of the observations of Apex Court in **D.K. Basu versus State of West Bengal, 1997 (1) RCR (Crl.), 372**, it is observed that since the unlawful detention is attributed to the State authorities, the amount will be payable by the State of Punjab within a period of one month.

Nothing said in this order will effect the rights of the parties to be determined in civil or criminal proceedings, before any Court.

Any observations made in this case is meant solely for the disposal of the present habeas corpus petition.

(M.M.S. BEDI)
JUDGE

06.04.2016
Neha