

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

**CRM No.266 of 2016 in/and
CRWP No.1245 of 2016
Date of Decision: November 22, 2016**

Baljit Singh and another

...Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Gupta, Advocate
for the petitioners.

Mr. J.S. Brar, AAG, Punjab.

FATEH DEEP SINGH, J.

CRM No.266 of 2016

Learned State counsel has made statement that he does not intend to file reply to the application and has no objection if the same is allowed.

Upon hearing learned counsel for the parties and perusing the records of the case and in the light of the averments made in the application that due to inadvertent pure clerical bonafide error name of the alleged detenues have been wrongly mentioned as Baljit Singh and Mukhtiar Singh when their names actually are Salinder Singh son of Baljit Singh and Achmal son of Mukhtyar Chand and that no prejudices is likely to be caused to the other side and in the interest of justice the application is allowed. The names of the detenues be read as Salinder Singh son of Baljit Singh and Achmal son of Mukhtyar Chand instead of Baljit Singh and Mukhtiar Singh.

Criminal miscellaneous application stands disposed off accordingly.

CRWP No.1245 of 2016

The petitioners are the unfortunate fathers of the alleged detenues and have invoked the jurisdiction of this Court under Articles 226/227 of Constitution of India seeking writ in the nature of Habeas Corpus for the release of their illegally detained sons.

The precise grounds canvassed by the petitioners in this petition and as is well elucidated from the arguments of their counsel are that on 04.09.2016 an unidentified body was recovered by the Police of District Pathankot and which was subsequently revealed to be that of one Ramesh Chand. However, it is subsequent thereto without there being any legitimate recourse adopted by the Police detenues were detained by the Police after they were picked up on 15.9.2016 from their respective houses and inspite of intervention by their families and respectables the Police has kept them under illegal detention.

This Court vide orders dated 20.9.2016 has appointed a Warrant Officer, whose report has been received which is dated 20.09.2016 and is taken on records.

The State in its response have filed reply by way of an affidavit of Sh. Kirpal Singh, PPS, Deputy Superintendent of Police, (Dhar Kalan) Sub-Division, Pathankot taking the plea that an FIR No.79 dated 03.09.2016 under Section 302 IPC was registered with Police Station Sujampur, Pathankot on the statement of Ravi Kumar son of Ramesh Chand against unknown persons and during the course of investigations both

Salinder Singh and Achmal so alleged detenues were called to the Police Station only for the purpose of investigation to ascertain the truth on 20.9.2016 around 7 p.m and were sent back after 10 p.m and which fact was duly incorporated in the records of the Police and, thus, denied the allegations that there was any illegal detention and harassment to the sons of the petitioners.

Upon hearing learned counsel for the parties and perusing the records of the case.

By now it is well entrenched law as to the very maintainability of a writ under Articles 226-227 of Constitution of India in such an eventuality where there are serious allegations of illegal detention by virtue of Article 21 which deals with fundamental right to life and personal liberty of a human being and that too citizens of this Country the Court needs to be sensitive to such calls, agony of the victim side and needs to ensure that there is due redressal of the grievance and that the Police is not allowed to misuse the process of law to meet its own ends. The report of the Warrant Officer shows that the Warrant Officer along with relatives of the detenues have rushed to the Police Station, Sujampur at about 9.40 p.m. and when the Warrant Officer along with others entered the Police Station informed the Sentry through the grill the identity and purpose of the visit and after much reluctance and time the Warrant Officer after procuring contact number of the Senior Superintendant of Police, Pathankot contacted him and told the purpose of visit and after much delay the Warrant Officer and others were allowed to enter the Police Station. It was at this juncture, two persons from inside have rushed towards the Warrant

Officer on seeing him and disclosed their identity to be of present detainees and had told the Warrant Officer that they were in custody of the Police since 15/16 September, 2016 and that upon raid by the Warrant Officer they had been pushed out of their rooms where they were illegally detained. The Warrant Officer was not allowed to have access to the *Rojnamcha* and records of the Police for a long period of time as is reflected from the report of the Warrant Officer is in itself suggestive that what has transpired in between this period of time. Though, learned State counsel vehemently opposed the stand of the petitioners side but from this conduct of the Police it can be abundantly and legitimately gathered that the sons of the petitioners were under illegal detention of the Police at the time of raid and it was in between the time gap that was sought by the Police before making the Warrant Officer and others could be allowed to enter the Police Station was utilized to make relevant entries are matters of much serious consequences and puts the conduct of the Police under a cloud raising needle of suspicion against them. To the very query of the Court, learned counsel for the State could not show any notice issued under Section 160 Cr.P.C whereby, detainees were called by the Police to the Police Station and neither any statement attributable to them during the course of their questioning could be brought to the notice of the Court. No proof whatsoever to support and corroborate the allegations of the Police that these persons were called to Police Station regarding alleged FIR so registered against some unknown persons could be highlighted either in the reply or in the arguments of the learned State counsel. Thus, from the reply and in the light of the report of the Warrant Officer it stands judiciously and

conclusively established beyond any doubt that both these persons were kept in illegal custody by the Police and, thus, the State cannot escape out of its commitment in upholding the provisions and spirit of Article 21 and for this indignity heaped upon the detenues and the physical as well as mental torture to which they have been put to is clear cut serious violation of the fundamental right to life and personal liberty of the detenues. It has been rightly remarked by **Abraham Lincoln** which is reproduced as follows:-

“If you once forfeit the confidence of our fellow citizens you can never regain their respect and esteem. It is true that you can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.”

Thus, this sacred saying by a legal luminary, a person who was adored for his governance and wisdom holds truth even as on date, hundreds and hundreds of years later. Thus, to the mind of this Court, the violation in any manner, be it torture, abuse of Police powers which has come about to attain sinister proportions and is so wide spread that it has attracted attention of the International community as this problem is not only in this Country but is rampant throughout Universe where living beings have their abode. Thus, from the conduct of the respondent-State through its functionaries, the Police Officials have tortured and criminally assaulted causing indignity to these persons which conduct is cruel and inhumane and, thus, necessitates intervention by this Court and seeking support from **People's Union for Civil Liberties vs. Union of India 1997 Vol II RCR (Criminal) 161 S.C** and **D.K. Basu vs. State of West Bengal 1996(4) Crimes 233** the Court deems it appropriate to award compensation as a

relief to redress to some extent the wrong done to the persons who were illegally detained by the Police. Though, no amount of monetary compensation can assuage the feeling of wrong done to them but attempt is sought to be made to mitigate the same to some extent.

In the light of the same, directions are issued to the respondent-State to immediately award compensation which is assessed to the tune of Rs.1 lac each to these two detenues, in all totalling Rs.2 lacs which shall be taken into account in compensation if so awarded by a Civil Court. This amount be paid to them within the period of one month from the date of receipt of copy of this order else State shall be bound to pay interest @ 9% per annum from the date of filing of this criminal writ petition till the date of realisation. Besides this, Director General of Police, Punjab is directed to take administrative action immediately against the concerned Station House Officer and other Police Officials responsible for this as well as to lodged FIR against them within a period of one month from the date of receipt of copy of this order.

The present petition is disposed off in those terms.

Compliance report be sent to this Court within a period of two months from the date of receipt of copy of this order.

(FATEH DEEP SINGH)
JUDGE

November 22, 2016
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No