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

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W.P.(C)No.3365/2017

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Date of decision : 19th April, 2017

RAHUL SHARMA

..... Petitioner

Through : Mr. Gaurav Kumar Bansal,
Adv.

versus

UOI AND ANR

... Respondents

Through : Mr. Sanjay Jain, ASG with
Ms. Ruchi Jain, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

ACTING CHIEF JUSTICE

1. This writ petition claims to have been filed in Public Interest on the issue of release of an Indian citizen *Kulbhushan Sudhir Jadhav* contending that he has been illegally detained at an unknown location in Pakistan and also has been illegally sentenced by a military court in Pakistan as per a press release dated 10th April, 2017 downloaded by the petitioner from the website of the Inter Services Public Relation, Pakistan.
2. The writ petitioner contends that the said Indian Citizen is being denied consular access in contravention of the Vienna

Convention on Consular Relations, 1963, violation whereof renders the State parties entitled to invoke the jurisdiction of the International Court of Justice under the Optional Protocol to which both India and Pakistan acceded in November, 1977 and March, 1976 respectively.

3. The petitioner also complains that no protocol stands issued by the Ministry of External Affairs, Government of India for release of Indian citizens who have been abducted/kidnapped in other countries. In this regard the applicant places reliance on the response dated 29th July, 2015 to a query made by him under the RTI Act, 2005 in respect of Indian Nationals who were missing in Iraq.

4. Premised on these pleas, the petitioner makes the following prayers in the present writ petition:

- “a. Issue Writ of Mandamus against the Respondents to approach the International Court of Justice for providing Consular Access to Kulbhushan Sudhir Jadhav.*
- b. Issue Writ of Mandamus against the Respondents to approach the International Court of Justice for securing release of Kulbhushan Sudhir Jadhav, an Indian Citizen.*
- c. Issue Writ of Mandamus against the Respondents to issue protocol for the release of Indians abducted/kidnapped in other country.*
- d. Pass any such other and further order(s) as this Hon’ble Court may deem fit and proper in the facts and the circumstances of the case.”*

5. Mr. Sanjay Jain, learned Additional Solicitor General of India, is present on behalf of the respondents on advance notice.

Right at the outset, Mr. Jain has submitted that so far as the response of the Indian Government to the unfortunate state of affairs in the matter of illegal detention and sentencing of an Indian Citizen in Pakistan is concerned, the Indian Government has reacted with promptitude at the highest level. Mr. Jain would submit that in this regard the External Affairs Minister has even apprised the Parliament of all efforts which are being undertaken by the Government of India to ensure his life and well-being and has assured, not only the Parliament but the entire Nation of the unstinted efforts being made in this regard. Mr. Jain has also submitted that the Members of the Parliament, cutting across all party lines, are at one with the Government in this regard and that this writ petition on such sensitive matters, which are purely in the domain of governmental function and policy, is unwarranted.

6. Right at the outset, we had queried learned counsel for the writ petitioner as to whether he had approached the respondents before filing this petition. The answer was in the negative. Learned counsel had no response to even our query as to how the writ petitioner was presuming that the respondents were not making best efforts to secure the life and liberty of the Indian Citizen and seek his release. Mr. Bansal, ld. counsel for the petitioner, also has not been able to dispute the submissions of the ld. Additional Solicitor General.

We therefore, find no reason to disbelieve the submission made by Mr. Sanjay Jain, learned ASG when he informs this Court that every possible endeavour is being made by the Government of

India to safeguard the life and liberty of its citizen.

7. We also note that the matters involved are of such sensitivity that it would be inappropriate and impermissible to have a discussion thereon in an open court room, especially about the efforts of the Government of India to secure justice for its citizens.

More importantly, any revelation regarding the efforts being made by the respondents may prejudice their success or frustrate the steps in this regard.

8. It appears that by way of this writ petition, an attempt is being made by the petitioner to seek disclosure of highly confidential matters regarding which secrecy has to be maintained for the obvious reason of ensuring the safety of the life and liberty of the Indian Citizen. In a situation having so many contours involving urgency and sensitivity, such attempts deserve to be discouraged right at the outset, especially when they may jeopardise the efforts of the respondents.

9. So far as designing a protocol is concerned, we are of the view that the petitioner is presumptuous that there can be a strait-jacket formula which can be applied in every instance of abduction or kidnapping of Indian Citizens abroad. During the course of hearing, the petitioner has himself pointed out the wide divergence in the situations that may arise when he refers to a kidnapping of Indian Citizens by Somali pirates (when the respondents admittedly succeeded in securing release) and to the case in hand. Therefore, this matter best deserves to be left to the expertise and assessment by the respondents.

10. We also note that at a time when the entire energies of the respondents are required to be devoted to addressing such a serious matter, the petitioner has sought to divert attention by filing this writ petition.

We have no doubt at all that the respondents are best placed to take the decisions as also all appropriate steps to safeguard the life and liberty of the citizens of this country. As informed by Mr. Jain, Id. ASG, all steps are being taken in the present case and with urgency.

11. In view of the above, as the concerns raised in the writ petition are being addressed by the respondents, no intervention by us in the matter is called for. It is so ordered.

Dasti under the signatures of Court Master.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 19, 2017

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