

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45077-2017 (O&M)
Date of decision: 24.04.2018

Veerpal

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for issuance of directions to the District & Sessions Judge, Mohali to hold an inquiry regarding an incident, in which nephew of the petitioner namely Amit Malik @ Bhura, when brought from the Central Jail, Patiala to appear before the Illaqa Magistrate, Mohali on 23.11.2017, in FIR No.158 dated 28.04.2017 under Sections 302/34/120-B of the Indian Penal Code (for short 'IPC') and Sections 25/27 of Arms Act, Police Station Zirakpur, District Mohali, was taken away by respondent No.3-SSP, Mohali from the Court premises to CIA Staff, Kharar and was subjected to 3rd degree torture.

It is also prayed that as an interim measure, Chief Medical Officer, Rajindra Hospital, Patiala be directed to constitute a Medical Board to

medically examine Amit Malik @ Bhura to verify the injuries sustained by him and further to direct securing of recording of the CCTV cameras of CIA Staff, Kharar, Central Jail, Patiala and Mohali District Courts dated 23.11.2017. It is further prayed that instead of physically producing the victim before the trial Court, further judicial proceedings be undertaken through video conferencing.

Learned counsel for the petitioner submit that nephew of the petitioner namely Amit Malik @ Bhura is involved in two FIRs i.e. FIR No.62 dated 04.04.2015 under Sections 307, 343, 186, 465, 467, 468, 471, 473, 474 IPC and Sections 25/54/59 of Arms Act, Police Station Sadar Patiala, District Patiala and aforesaid FIR No.158 dated 28.04.2017. It is further submitted that Amit Malik @ Bhura was detained in Central Jail, Patiala and was regularly appearing before the Court under the protection of Patiala Police. On 23.11.2017, while he was produced before the Illaqa Magistrate at SAS Nagar (Mohali), SSP, Mohali had forcibly taken him to CIA Staff, Kharar and tortured him by adopting 3rd degree method and caused him serious injuries and even his head was shaved.

Learned counsel for the petitioner further submits that since nephew of the petitioner is under-trial prisoner in two FIRs, he was forcibly taken from Court premises at Mohali to CIA Staff, Kharar by respondent No.3 and was given 3rd degree torture, as detailed in para 3 of the petition, therefore, it is prayed that an inquiry be marked to District & Sessions Judge, Mohali to look into the incident, as it amounts to violation of fundamental rights of the accused person and the police authorities have no right to torture an under-trial person, while in judicial custody.

Learned counsel for the petitioner has relied upon a judgment of

the Hon'ble Supreme Court in **Monica Kumar and anr. Vs. State of UP and others, 2017 (8) Scale 603** to submit that in such/similar circumstances, where the High Court has declined the prayer for CBI/an inquiry and directed the petitioner to avail his remedy under Section 156 (3) Cr.P.C., the Hon'ble Supreme Court had issued a direction to the District & Sessions Judge to enquire into the incident. Facts of said case are that the petitioners i.e. Monica Kumar and another were siblings and were pursuing their MBBS course and had filed a Writ Petition complaining of harassment meted out by the Chairman of the College and SHO and his supporting staff brutally assaulted the petitioners with lathies, shoes, fist and caused numerous injuries on all parts of their body. They got themselves medico-legally examined in the hospital and x-ray report revealed dislocated fracture and other injuries. In such circumstances, the Hon'ble Supreme Court has directed the District & Sessions Judge, Gaziabad to nominate a judicial officer to hold an inquiry in the said incident.

Learned counsel for the petitioner has also relied upon **D.K. Basu Vs. State of West Bengal, 1997 (1) RCR (Criminal) 372** to submit that the police authorities have failed to abide by the guidelines given by the Hon'ble Supreme Court regarding the arrest and detention of the accused person Amit Malik @ Bhura and have violated his legal rights. Counsel for the petitioner further submits that the respondents especially respondent No.3 has infringed the fundamental right of life and liberty of nephew of the petitioner and therefore, an inquiry may be marked to District & Sessions Judge, Mohali. Learned counsel for the petitioner has further relied upon certain similar orders passed by this Court, where this Court noticing that a victim/under-trial has been given injuries, as per Medico Legal Report, inquiries have been marked to

the judicial officers.

While issuing notice of motion, a direction was issued that aforesaid Amit Malik @ Bhura be produced before a Board of Doctors at Patiala Hospital for his medical examination vide order dated 28.11.2017. Thereafter, vide order dated 02.12.2017, further direction was issued to Superintendent of Jail, Patiala, CIA Staff, Kharar and Superintendent, District Courts, Mohali to preserve the recording of CCTV footage dated 23.11.2017.

Reply by way of affidavit of Deputy Superintendent, Central Jail, Patiala has been filed and as per this affidavit, CCTV footage dated 23.11.2017 has been preserved. Even otherwise, it is not disputed by the petitioner himself that on 23.11.2017, Amit Malik @ Bhura was taken from Central Jail, Patiala under police protection for production before the Illaqa Magistrate, SAS Nagar (Mohali). It is further stated that as per the directions of this Court, Amit Malik @ Bhura was examined by a Board of Doctors comprising of Dr. Aradaman Singh, Prof. Medicine, Govt. Medical Collge, Patiala, Dr. Kulwant Singh, Associate Prof. Surgery, Dept. of General Surgery, GMC & Rajindra Hospital, Patiala and Dr. Hari Om Aggarwal, Assistant Professor, Orthopedics, Rajindra Hospital, Patiala. The report of the Medical Board is reproduced as under: -

“1. Prisoner Amit Malik was asked if he has got any Medical Problem to which he answered that he has got no medical problem and he is perfectly alright.

2. On Medical Examination his pulse was 82/min, B.P. 130/70, mm of Hg, Heart Sounds normal, no murmur, respiration rate 15/min, Vesicular breathing with no adventitious sounds. He was afebrile. No hepatosplenomegaly or any other organomegoly.

Neurological exam was NAD.

3. On surgical examination there was no varicose Vs, Varicocel Hernia sites were normal. No other surgical ailment. No H/O bleeding persectum.

4. On orthopedic examination his gait was normal and all joints were normal. Muscle power was normal.

5. Other examination NAD.

Identification mark of prisoner:

(a) Old scar mark of 0.5 cm size on forehead above middle of (rt.) eyebrow.

(b) Old scar mark of 0.7 cm on lateral aspect of left eyebrow.

*Sd/-
2/12/17
(Aradaman Singh)
Prof. Medicine,
Govt. Medical Collge, Patiala,*

*Sd/-
2/12/17
(Dr. Kulwant Singh)
Associate Prof. Surgery
Dept. of General Surgery
GMC & Rajindra Hospital,
Patiala*

*Sd/-
2/12/17
(Dr. Hari Om Aggarwal)
Assistant Professor
Orthopedics
Rajindra Hospital, Patiala.”*

Separate reply by way of affidavit of Deputy Superintendent of Police (Investigation), District SAS Nagar (Mohali) has been filed and as per this reply, it is stated that nephew of the petitioner is involved in more than 20 cases/FIRs and apprehending that he may be murdered or some untoward incident may happen, Senior Superintendent of Police, SAS Nagar (Mohali), vide letter dated 22.11.2017, has directed to make adequate arrangement for

providing security to the accused and to maintain law and order situation. It is also stated that nephew of the petitioner, after the Court proceedings on 23.11.2017, was taken to CIA Staff, Kharar under police escort in order to ensure his safety and security and thereafter, he was sent to Central Jail, Patiala and duration of stay of Amit Malik, nephew of the petitioner at CIA Staff, Kharar was about 30-40 minutes. The allegations of giving 3rd degree torture were specifically denied. It is further stated that there is no provision for preserving the recording CCTV cameras installed at CIA Staff, Kharar and it is only for the purpose of live monitoring.

A report from the District & Sessions Judge, SAS Nagar (Mohali) dated 11.12.2017 was received and as per this report, the capacity of CCTV cameras installed in Judicial Complex, SAS Nagar (Mohali) to retain/preserve the recording is for a period of 12 days by the DVR system and the backup is overwritten by the newly created backup by the DVR system and therefore, CCTV cameras recording of 23.11.2017 is not available with the DVR system installed at Judicial Courts Complex, SAS Nagar.

In reply, learned State counsel has submitted that no such incident of giving 3rd degree torture has happened. It is submitted that on 22.11.2017, SSP, Mohali had issued directions to SHO, Police Station Sohana, Kharar, DSP, City-II, Sohana, SP City and SP (Security & Traffic) as well as Incharge, Police Control Room, District Police Office for providing security arrangement regarding production of under-trial prisoners namely Amit Malik @ Bhura son of Yash Pal, Sushil Malik son of Mangal and Narinder Mandok son of Om Parkash from Central Jail, Patiala to Mohali Courts Complex, as the accused persons are hardcore criminals who can escape from police custody or can be

attacked at any place because of old enmity. It was further directed that SHO, Police Station, Sohana along with 10 police officials will be responsible for making strong arrangement for the security and traffic at the time of their production in the Court.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

(i) It is not disputed by learned counsel for the petitioner that when nephew of the petitioner was produced before the Medical Board, no injury was found on his body and even he has declared that he had no medical problem and is perfectly alright. Since the Medical Board, consisting of senior doctors of Rajindra Medical College and Hospital, Patiala has medico-legally examined said Amit Malik @ Bhura, if 3rd degree torture was given by the police officials, he could have complained to the Board of Doctors. I do not find any force in the submission of counsel for the petitioner that said Amit Malik @ Bhura was under threat of the police officials not to open his mouth in front of the Board of Doctors who medico-legally examined him as per order of this Court and found no injury on his body, as per the report reproduced above.

(ii) A day before 23.11.2017, respondent No.3-SSP, Mohali had issued a letter giving strict instructions to the police officers/officials for providing adequate security and in fact more than 10 persons were deputed to ensure safety of nephew of the petitioner along with two other co-accused, as they were found involved in more than 20 FIRs of serious nature. It is own case of the petitioner that his nephew in this case is facing trial under Section 302 IPC and is also involved in similar other cases.

(iii) At no point of time, nephew of the petitioner namely Amit Malik

@ Bhura or his co-accused lodged any complaint with the Presiding Officer/Illaqa Magistrate regarding any 3rd degree torture given by SSP, Mohali.

(iv) The present petition has been filed without approaching any police authority or any senior officer of respondent No.3. No representation was given to any authority in this regard.

(v) In the affidavit of DSP (Investigation), SAS Nagar (Mohali), it is stated that after the Court proceedings on 23.11.2017, nephew of the petitioner was taken to CIA Staff, Kharar for ensuring his safety and after about 30-40 minutes, he was taken to Central Jail, Patiala. If any incident of giving 3rd degree torture, during this period, had happened at CIA Staff, Kharar, nephew of the petitioner, who was admittedly taken to Central Jail, Patiala on the same day, could have brought it to the notice of the jail authorities that he has been given any beatings or 3rd degree torture and he could have been produced before the jail doctor immediately for the said purpose. Rather the report of the Medical Board shows that nephew of the petitioner has declared that he is not facing any medical problem.

(vi) There is no dispute with regard to ratio of law laid down by the Hon'ble Supreme Court in the cases referred above and the guidelines laid down for protecting the rights of the under-trial prisoners that Court should ensure that their rights are not infringed, however, in the instant case, I do not find that nephew of the petitioner was subjected to any 3rd degree torture, as is clear from the report of Medical Board, where the nephew of the petitioner himself declared that he is not facing any medical problem.

In view of the above, I find no merit in the present petition, as it is apparent that the petitioner has filed this petition just to put pressure on the

police authorities who are otherwise taking due care i.e. safety and security of nephew of the petitioner, while taking him from Central Jail, Patiala to attend the Court at SAS Nagar (Mohali).

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

24.04.2018
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No