

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

CWP No. 13673 of 2012

Date of Decision: 06.07.2018

SOHAN SINGH

..... Petitioner

V/s.

UNION OF INDIA AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Satyapal Jain, Additional Solicitor General of India,
with Mr. Dheeraj Jain, Senior Counsel,
for respondent-UOI.

Mr. Sahil Sharma, DAG, Punjab.

RAKESH KUMAR JAIN, J. (Oral)

This petition is preferred by one Sohan Singh for seeking issuance of a writ in the nature of mandamus to the respondents, in particular to the Ministry of External Affairs, Government of India to seek the release of his son namely, Gurmeet Singh who is allegedly lodged in the Kot Lakhpat Jail, Lahore (Pakistan).

It is averred in the petition that son of the petitioner, Gurmeet Singh, was holding an Indian Passport bearing No. R-949877 dated 05.04.1994. He came into contact with one travel agent who had assured him that he would send him abroad to earn his livelihood. Accordingly, on 27.09.2002, petitioner's son left for Lebanon on a valid visa as a Labourer. He stayed there upto 09.05.2004 and made an attempt to enter Greece via Iran and Turkey. But in this process, he was arrested by the Turkish Army because he was not possessing a valid visa for Turkey.

It is further averred that in the year 2006, petitioner alongwith the father in law of his son, wrote a letter to the Embassy of India at Tehran,

Iran for knowing the whereabouts of his son. The Secretary (Consular) vide letter dated 14.03.2007 informed that Gurmeet Singh has left Iran on 09.08.2005. The petitioner then came to know that his son made an attempt to reach India by road through Pakistan as the Pakistan border touches the Iran border as well. It is further averred that petitioner's son was arrested in Pakistan and is languishing in the jail there. Thereafter, petitioner attributed some knowledge about the presence of his son in Pakistan to one Surinder Kumar from District Jalandhar, Punjab who was released from Kot Lakhpat Jail, Lahore (Pakistan) on 26.11.2008 and had informed that his son, Gurmeet Singh, was also in Kot Lakhpat Jail, Lahore (Pakistan). He also informed that Gurmeet Singh was in the mental ward of the Hospital Wing because he had lost his mental balance.

The petitioner approached the High Commission of India at Islamabad, Pakistan through a letter dated 18.12.2008 and they sent a letter dated 23.01.2009 to the Ministry of Foreign Affairs, Government of Islamic Republic of Pakistan at Islamabad to confirm the presence of Gurmeet Singh and to provide him consular access. Thereafter, the Consular at High Commission of India at Islamabad sent a reminder dated 27.05.2009 regarding the presence of Gurmeet Singh in the Kot Lakhpat Jail, Lahore (Pakistan). This was followed by a reminder dated 30.06.2009 but the petitioner did not get any information and sent another letter dated 14.09.2009. Thereafter, he received a letter dated 30.09.2009 from the High Commission of India, Islamabad, Pakistan that the matter was taken up with the Pakistan Government but no information regarding son of the petitioner is being forwarded by the said Government. It is also averred that the petitioner

had made an appeal to the Government of Pakistan for setting his son free from the Jail and also wrote a letter to the Government of India on 15.06.2010.

The grievance of the petitioner is that the Government of India is not taking necessary action, rather causing inordinate delay in the release and repatriation of his son, who is an Indian national and languishing in Jail in Pakistan which is in violation of his fundamental right vested under Article 21 of the Constitution of India relating to his personal freedom.

On the basis of the aforesaid facts set out in the petition, respondents were asked to file their reply. In pursuance thereof, affidavit dated 18.08.2017 of Sh. Shubham Singh, Under Secretary, Ministry of External Affairs, Government of India is relevant to be referred to in which he has categorically averred as under: -

“1. That the Government had taken up the matter before Pakistan regarding Shri Gurmeet Singh S/o Shri Sohan Singh on 23.01.2009 and subsequent reminders were sent thereafter by the High Commission of India in Islamabad to confirm Shri Gurmeet Singh’s detention and requested to provide Consular Access to him on 27.05.2009, 30.06.2009, 27.08.2012, 15.05.2013, 27.07.2013 and 10.05.2016. Copies of the above communications are annexed as Annexure R-1 collectively.

2. That an affidavit in respect of this case was sent by the Ministry to the O/o Assistant Solicitor and was received by his office on 2nd July 2016 but the affidavit was not filed in the Court. Delay in filing the response from Ministry is bonafide and unintentional as the Ministry was under the impression that Affidavit has been already filed in the Court. On receiving the intimation in this regard, affidavit is immediately prepared and is being filed in Court.

3. *That inspite of the repeated requests, the Government of Pakistan did not respond, until very recently. On 19 May 2017, Pakistan replied that Sh. Gurmeet Singh is not present in Kot Lakhpat Jail. Copy of the reply from Pakistan is annexed as Annexure R-2.*

4. *That the name of the Gurmeet Singh is also not reflected in the list of Indian and believed to be Indian Prisoners in Pakistan as provided by Pakistan on 1 July 2017. The list is annexed as Annexure R-3.*

5. *That the Government has again taken up the issue of Shri Gurmeet Singh with Pakistan on 25 July 2017 and requested Pakistan to check their jails and confirm his presence in any other jail in Pakistan and provide consular access to him. Response from them is still awaited. Note verbal sent to Pakistan is annexed as Annexure R-4.*

6. *That it is being taken as a very serious matter, High Commission of India, Islamabad is making every effort to get any knowledge regarding the son of Petitioner. In the given circumstances, Government of India will continue to press the Government of Pakistan to respond on the status of detention of Shri Gurmeet Singh in Pakistan”*

According to the respondents, Pakistan has denied the presence of petitioner's son in Kot Lakhpat Jail, Lahore, therefore, once the mere existence of petitioner's son is denied by the Government of Pakistan in their territory, Ministry of Foreign Affairs, Government of India is unable to help the petitioner for the purpose of his release and repatriation.

Learned Additional Solicitor General of India has submitted that at present, the petitioner cannot be helped in any manner but he assured the Court that in case the petitioner gives any clue about the presence of his son in the territory of Pakistan or in any other country in the world, where he has been illegally detained because of not having valid visa/permission, he may

file an application in this case for the revival of this writ petition and Government of India would immediately take action for the purpose of helping the petitioner's son.

Therefore, there is no option left with this Court but to close the proceedings at this stage but liberty is granted to the petitioner to file an application in case if he gets any information/clue about the presence of his son either in Pakistan or in any other country in the world where he is allegedly been illegally detained or in case the Government of India, Ministry of Foreign Affairs gets any information in this regard they may also file an application for revival of this writ petition.

With these observations, the present petition is disposed of.

July 6, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

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