

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRWP-712-2018

Date of Decision:01.11.2018

Jaswinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Ms. Sushma Chopra, Advocate,
for the petitioner.

Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab.

HARI PAL VERMA, J.

Petitioner has filed the present petition under Article 226 of the Constitution of India, for issuance of a writ in the nature of habeas corpus so as to get the detenue-Sodhi Singh, who is a servant of the petitioner released from the illegal custody of respondent Nos.4 and 5.

This Court vide order dated September 03, 2018 while issuing notice of motion in the case had directed the Registry to appoint a Warrant Officer, who shall search the detenue at the place(s) as may be pointed out by the petitioner and in case the detenue is found in illegal detention, to get him released forthwith.

Pursuant to the aforesaid order, the Warrant Officer visited the Police Post Jogewala, Police Station Makhu at about 6.45 PM and has submitted his report dated 04.09.2018. The operative part of the report is reproduced as under:-

informed that he has been arrested today at 05.35 PM and his arrest has been shown in PS Makhu. Undersigned put a question to ASI as to why the alleged detainee has been kept in lock up in Police Post Jogewala and FIR has been lodged at PS Makhu to which he replied that he was arrested near Police Post Jogewala and brought here for further investigations in the matter and Police Post Jogewala comes under the jurisdiction of PS Makhu. ASI Surjit Singh could not show any case file or his arrest except the abovementioned FIR however he kept on stressing the fact that the arrest of the aforesaid alleged detainee has been shown online at PS Makhu and undersigned and go there and check the same. Thereafter, undersigned went to the lock up where the alleged detainee Sodhi Singh was locked. He informed the undersigned that he is in the custody of ASI Surjit Singh, Police Post Jogewala since last two days and the Police is harasasing him unnecessarily. ASI Surjit Singh denied the allegations leveled against him. On asking of the undersigned, ASI Surjit Singh called SHO, PS Makhu on his mobile and asked him to come to Police Post Jogewala. Accordingly, SHO reached there within 5-10 minutes. SHO also endorsed the same version as told by ASI.

Ascertaining the situtation, undersigned decided to visit PS Makhu to validate the facts mentioned by ASI and SHO and reached there at 07.25 PM. SHO Harinder Singh, PS Makhu shown the arrest entry of alleged detainee Sodhi Singh and he has also furnished print out of his arrest entry. A bare perusal of the arrest entry shows revealed that Sodhi Singh was arrestred at 05.35 PM on 03.09.2018 at Sr. No.27 which may kindly be perused at Annexure 'B'."

Learned State Counsel has filed the status report by way of

affidavit of Sh. Narinder Singh, PPS, Deputy Superintendent of Police, Zira,

District Ferozepur, which is taken on record. On the strength of status report, he states that FIR No.136 dated 02.09.2018 under Sections 307, 379, 506, 148, 149 IPC and Sections 25, 27 of the Arms Act, Police Station Makhu has been registered against Surjit Singh son of Mohinder Singh, resident of village Lohian, District Jalandhar, Kulwant Singh son of Harnam Singh, Dilbag Singh son of Harnam Singh, Sodhi Singh (alleged detainee) son of Amar Singh, residents of village Rehrwan, District Jalandhar and 8-10 other unidentified persons on the basis of statement of Daljit Singh son of Mukhtiar Singh. In the said FIR, the alleged detainee Sodhi Singh was arrested by the police of Police Station Makhu on 03.09.2018. The petitioner was well-conversant about the registration of the case against the detainee(Sodhi Singh) and it is in order to harass the police officials and to create evidence in favour of the alleged detainee, petitioner has filed the present petition. The object of filing this petition is well motivated.

Learned counsel for the petitioner has argued that the petitioner along with other persons is in possession of the land measuring 460 kanals at village Hardon Jand, Tehsil Zira and he is cultivating the said land along with other persons for the last about 26 years, having his residential accommodation in that village. Respondent Nos.2 to 4 in connivance with each other i.e. respondent No.5 Surjit Singh posted at Police Chowki Jogewala, P.S. Makhu, Tehsil Zira, District Ferozepur, wants to take forcible possession of the land which is otherwise in possession of the petitioner being a co-sharer. Said respondent No.5 has used filthy language and tried to encroach upon the possession over the land in connivance with other respondents. Name of the petitioner is duly reflected in the jamabandi for the year 2013-2014 in the column of cultivator and therefore, possession

is not in dispute. A civil suit for permanent injunction is already pending between the parties including against respondent No.5, wherein the petitioner has moved an application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of temporary injunction for the land in question.

I have heard learned counsel for the parties.

The pendency of civil litigation between the parties i.e. suit for permanent injunction and pendency of application under Order 39 Rules 1 and 2 read with Section 151 CPC for the same land for which the petitioner is claiming cultivating possession, are not in dispute. The Warrant Officer as appointed by this Court had visited the place(s) as pointed out by the petitioner. He has reached the Police Post Jogewala, PS Makhu at 6.45 PM, whereas the FIR has already been registered in the matter, in which the detenue has been shown arrested in PS Makhu. The plea of the petitioner that he was found in detention at Police Post Jogewala, whereas FIR was registered at PS Makhu, cannot be accepted as Police Post Jogewala falls under the PS Makhu where the FIR has been registered. Thus, having perused the report submitted by Warrant Officer dated 04.09.2018, this Court does not find that the detenue (Sodhi Singh) has been found in illegal detention, rather he has been found arrested in FIR No.136 dated 02.09.2018 under Sections 307, 379, 506, 148, 149 IPC and Sections 25, 27 of the Arms Act, P.S. Makhu.

Dismissed.

November 01, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No