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

+ **W.P.(C) 219/2014**

MANNA MASHISH & ORS. Petitioners
Through: Mr Arvind K. Sharma, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Mr Vivek Goyal, CGSC with Mr
Rajeev Ranjan Sahai, Mr Harsh
Pandit, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.01.2018**

1. The petitioners have filed the present petition, *inter alia*, praying that directions be issued to respondents for rehabilitating the petitioners and providing compensation for the mental and physical loss, pain, torture suffered by the petitioners and their families during the period when the petitioners were incarcerated in Pakistan.
2. The petitioners claim that they have been working with the Research and Analysis Wing (RAW) in Amritsar and had been detained by the Pakistan Agencies on charges of spying. The petitioners claimed that they were apprehended in Pakistan and were convicted under the Official Secret Act, 1923 in the State of Pakistan.
3. Petitioner no.1 claims that he had been detained in a Pakistani Jail for a period of 25 years, that is, from 1984 to 2008. Petitioner no.2 claims to have been detained in a jail in Pakistan for a period of 14 years, that is, from

May/June 1974 to January 1988. Similarly, petitioner nos.3 and 4 also claim that they were detained in Pakistan Jail for a period of four years each: that is, from 18.12.2004 to 13.08.2008 in case of petitioner no.3 and from 2008 to 2012 in the case of petitioner no.4.

4. In the affidavit filed on behalf of respondent no.2 (Ministry of Home Affairs), it is affirmed that none of the petitioners had been recruited or trained by RAW and were never sent to any foreign state to gather information for the Indian side.

5. It is seen from the record that there is also no material to indicate that any of the petitioners except petitioner no.3, had been detained by Pakistan authorities as claimed by them. Petitioner no.3 has filed a photocopy of an order dated 15.09.2005 directing detention of the petitioner no.3 (Santok Singh), however original of the said document is not available.

6. In view of lack of any credible material, it is not possible for this Court to grant the relief as sought for by the petitioners. However, it is relevant to observe that in the affidavit filed on behalf of the Ministry of Home Affairs, it is specifically stated as under:-

“4. It is humbly submitted that the petitioners’ case may be considered for one time ex-gratia payment after establishing their claim from all the stakeholders and socio-economic conditions of the petitioners as full and final settlement.”

7. In view of the above, the present petition is disposed of by granting liberty to the petitioners to make a representation along with all relevant material as available with them to substantiate that they had been unjustifiably incarcerated by Pakistan Authorities. The petitioners may also

indicate their socio-economic condition. The respondents shall consider the said representations for an *ex gratia* payment as indicated in the affidavit referred to above.

8. The petition is disposed of with the aforesaid observations.

JANUARY 19, 2018
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VIBHU BAKHRU, J