

49# \$~

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

+ W.P.(CRL) 565/2018 and Crl. M.A. No. 3326/2018 (Stay)

RAM AVTAR MANDAL

..... Petitioner

Represented by: Mr. Rajesh Kumar, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Mr. Ripu Daman Bhardwaj,
Advocate for UOI.
Mr. Sanjay Lao, Additional
Standing Counsel for State with
SI Rajinder and SI Davinder
Kumar, Crime Branch.
Mr. Anupam S. Sharma, Spl.
P.P. for CBI for respondent
No.5.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

23.04.2018

%

1. By the present petition, the petitioner seeks a writ of mandamus to CBI to register FIR on the complaint of the petitioner, to investigate the matter of illegal custody and fake encounter of the petitioner's son.

2. Case of the petitioner is that petitioner's son was released on parole by this Court from 27th April, 2015 till 30th April, 2015 for attending the marriage of his younger brother. On 30th April, 2015 when the petitioner's son left home for reporting to Tihar Jail with his friend Deepak while on way to Tihar Jail he received a phone call from his wife that she was unwell. Thus the petitioner's son caught a train to meet his wife in village in

W.P.(CRL) 565/2018

Page 1 of 5

Bihar. Admittedly, the petitioner's son lived with his wife till 16th May, 2015 looking after her and getting the house repaired. It is the case of the petitioner that on 17th July, 2015 petitioner's son boarded train from Darbhanga Railway Station and reached New Delhi Railway Station on 18th July, 2015 where he met his friend Deepak Verma. He took rest at the house of Deepak Verma on 19th July, 2015 and left on 20th July, 2015 to surrender in Tihar Jail. Again he received a phone call from one of his friends and he told to his friend that he had jumped the parole and is going to surrender in jail today. On asking of Dev Narayan to meet him at Old Delhi Railway Station before surrender, petitioner's son went to meet him by boarding train from Dwarka Mor Metro Station for Chandni Chowk Metro Station, where he was apprehended by three-four policemen in plain clothes and was taken to unknown location. Thus the petitioner's son was falsely arrested in FIR No. 119/2015. Petitioner came to know about FIR No. 119/2015 only after the charge sheet was filed. Learned counsel further states that the petitioner's son has already been released by this Court in FIR No. 21/2007 as he was found to be a juvenile at the time of alleged offence. He thus prays for an investigation into the illegal custody from 20th July, 2015 to 2nd August, 2015.

3. A status report has been placed on record. As per the status report, petitioner's son was awarded life imprisonment in case FIR No.21/2007 under Sections 302/384/506 IPC and Section 25 Arms Act registered at PS Saraswati Vihar, Delhi. While the appeal was pending, this Court in Crl. Appeal No. 371/2015 granted interim bail however, the petitioner's son jumped the bail and did not surrender, resulting in issuance of non-bailable

warrants by this Court. After the petitioner's son was arrested in case FIR No. 119/2015 under Section 186/353/307 IPC read with Section 25 Arms Act at PS Crime Branch, he filed an application claiming that at the time of alleged offence of FIR No. 21/2007 he was a juvenile and thus he was released by this Court on 20th September, 2016 extending the benefit of juvenility.

4. Facts of case FIR No. 119/2015 under Sections 186/353/307 IPC read with Section 25/27 Arms Act are that on 2nd August, 2015 a secret information was received with regard to the petitioner's son who had jumped the bail in FIR No. 21/2007 that he would be reaching Bus Stand, Pragati Power Station, behind Pragati Maidan, New Delhi from Noida, U.P. on motorcycle No. DL 7S BJ 5043 between 9.00-10.00 PM to meet his associates. Thus a raiding party was constituted and a trap was laid. At around 9.30 PM motorcycle No. DL 7S BJ 5043 stopped at the destination and a person alighted from the motorcycle. He was waiting for someone on the footpath when the secret informer identified the person as Chanderjeet Kumar @ Kishan, son of the petitioner herein. The raiding party immediately moved towards Chanderjeet Kumar @ Kishan and disclosed their identity in loud voice asking him to surrender but sensing the presence of police, Chanderjeet Kumar @ Kishan retaliated and shouted '*aage mat badho varna goli maar doonga*', while taking out one pistol with his right hand and started running towards the motorcycle. In the meantime, Inspector Devender Kumar came on the footpath and Chanderjeet Kumar @ Kishan fired a shot towards him which hit his chest but he was not injured as he was wearing a bulletproof jacket. When HC Virender Singh and HC Vikram

W.P.(CRL) 565/2018

took out their service weapons and ran towards him, they also fired one shot each in the air in order to ensure that the petitioner's son surrenders. Chanderjeet Kumar @ Kishan again fired a shot aiming towards Constable Manish. After overpowering Chanderjeeet Kumar @ Kishan one 9 mm pistol having inscription of 'Made in USA' along with two live cartridges in its magazine, one live cartridge in its barrel and two empty cartridges were recovered from the road which were taken into possession and seized. Thus FIR No. 119/2015 under Section 186/353/307 IPC read with Sections 25/27 Arms Act was registered at PS Crime Branch.

5. Trial in the said FIR is proceeding and nine prosecution witnesses have since been examined out of total 15 prosecution witnesses. The motorcycle on which the petitioner's son was travelling was also found to be a stolen property.

6. Considering that though FIR No. 119/2015 was registered on 2nd August, 2015 and petitioner was produced before the Court of competent jurisdiction where he made no grievance nor lodged any complaint immediately, at this stage, no investigation can be carried out on the complaint of the father of the petitioner who states that his son was arrested on 20th July, 2015 and not on 2nd August, 2015.

7. Learned counsel for the petitioner submits that the CCTV footage of the platform at Old Delhi Railway Station can be looked into to ascertain the petitioner's son's presence at the station on 20th July, 2015. The petitioner has filed the present petition on 8th February, 2018 and the first complaint in this regard was also lodged, as stated by the learned counsel for the petitioner before the Magistrate in the year 2018. No CCTV footage of the

Station would now be available. It apparent that the case now being built up is only an afterthought to create a defence.

8. Petition and application are dismissed.

MUKTA GUPTA, J.

APRIL 23, 2018

‘vn’