

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL) 2099/2019 & CRL.M.A. 32309/2019

SMT SHAILENDER KAUR & ORS. Petitioners

Through Mr. Mir Akhtar Hussain with
Mr. Rakesh Kumar Pant,
Advocates

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through Mr. Rahul Mehra, Standing
Counsel (Crl.) with Mr. Chaitanya
Gosain, Advocate for State.
Mr. Manish ACP/Crime with
SHO/Insp. Joginder Singh, Insp.
Ram Kishan, PS Sagarpur.

%

Date of Decision: 31st July, 2019**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL****J U D G M E N T****MANMOHAN, J: (Oral)**

1. The present writ of habeas corpus has been filed seeking a direction to the Respondent Nos. 2 and 3 to produce Petitioners No. 1 to 10 before this Court. The present writ petition is supported by an affidavit filed on 29th July, 2019 by Petitioner No. 11 who states that she is a Parokar of Petitioner Nos. 1 to 10.

2. The gravamen of the present writ petition filed on 29th July, 2019 is that Petitioner Nos. 1 to 10 are in illegal detention of Respondent Nos. 2 and 3 from 27th July, 2019, and their whereabouts are not known.

3. The admitted position is that petitioner no. 1 is a Bad Character of the area who has been externed from Delhi for a period of two years vide order dated 29th January, 2019. The externment order issued under Section 47 of Delhi Police Act, 1978 has been annexed along with the present writ petition.

4. Mr. Rahul Mehra, learned standing counsel for the State, who appears on advance notice, has today in Court handed over a Status Report in which it is stated that Petitioner Nos. 4 and 6 had been arrested on 28th July, 2019 and had been sent to judicial custody by the learned Metropolitan Magistrate on 28th July, 2019 itself. He has handed over a photocopy of the remand application for police custody of accused Sumit-petitioner No.4 which shows that a learned Duty Metropolitan Magistrate had remanded him to police custody for two days on 28th July, 2019.

5. Mr. Mehra further states that during investigation of a gruesome murder case of Shahrukh, the name of Joginder Singh @ Joga, S/o Hardayal Singh, R/o RZ/B-1560, Gali No.6, West Sagarpur, New Delhi had emerged as one of the prime accused. During investigation it was also revealed that some of his close relatives are also involved in the crime. He emphasises that there are 142 criminal cases in which Joginder Singh @ Joga is involved. He points out that petitioner No.1 is the real sister of Joginder Singh @ Joga and she as well as her husband (petitioner No.2) and her son (petitioner No.3) are Bad Characters of the area. He points out that all the other petitioners are close relatives of Joginder

Singh @ Joga. The relevant portion of the Status Report is reproduced hereinbelow:-

“1. That on 27.07.2019, after getting the permission of out station for Rajasthan from senior officer, IO Insp. Ram Kishan along with staff with private vehicles departed for investigation in case FIR No. 321/2019 u/s 302 IPC, PS Sagarpur, vide DD No. 37B, Dated 27.07.2019, PS Sagarpur, New Delhi.

2. That on 27.07.2019, accused Sumit S/o Sh. Harjit R/o RZ- C/15, Gandhi Market, West Sagarpur, New Delhi was found present in front of Ansal, National Highway, near Ajmer, Rajasthan along with his relatives but Joginder @ Joga was not present there. After reaching the spot they attempted to flee away but with the help of staff, accused Sumit and his relatives Rohit S/o Darshan, Amit S/o Sh. Harjit, Rohan S/o Sh. Sunil Kumar and Vineet were apprehended and all persons were released after verifying the name and addresses except accused Sumit. One person succeeded in fleeing away from the spot namely Rahul S/o Sh. Darshan. Efforts were made to trace Rahul at Ajmer Rajasthan but all in vain. Relatives of the accused Sumit were released after verifying the name and addresses on the spot.

3. That, IO Insp. Ram Kishan interrogated the accused namely Sumit S/o Sh. Harjit and he disclosed that on 13.07.2019, he along with his relative namely Joginder @ Joga (Mama), Smt. Chandan Kaur (Nani), Sangeeta @ Bachchi (Mami), Jyoti (Mami), Rahul S/o Sh. Darshan (Cousin brother) committed murder of one person namely Shahrugh at the house of his mama Joginder @ Joga and fled away from the spot. Accused further disclosed that he can get help in apprehending accused Smt. Chandan Kaur and Smt. Jyoti, as they departed from Rajasthan to Delhi by a Bus today.

4. That IO Insp. Ram Kishan along with staff and accused Sumit departed from Ajmer to Rajasthan for arrest of co-accused namely Smt. Chandan Kaur and Smt. Jyoti and on

28.07.2019, as they reached at Dhaula Kuan, Delhi, accused Sumit identified his Nani Smt. Chandan Kaur and Mami Smt. Jyoti at Dhaula Kuan bus stop and they were apprehended by the IO with the help of W/Ct. Rita. Accused Smt. Chandan Kaur and Smt. Jyoti were interrogated in presence of W/Ct. Rita by the IO and after interrogation accused Smt. Chandan Kaur and Smt. Jyoti were arrested and efforts were made to arrest other accused persons but all in vain.

5. That on 28.07.2019, accused Smt. Chandan Kaur, Smt. Jyoti (Muffled face) and Sumit was produced after medical examination before the Ld. Duty, MM Ms. Vashundhra Chhonkar, Patiala House Courts, New Delhi. Accused Smt. Chandan Kaur and Jyoti were sent to Judicial Custody for one day as the TIP of the accused Jyoti is required in this case. Accused Sumit was taken on 2 days Police Custody Remand for arrest of Co-accused persons, whose are relatives of the accused.

6. That on 29.07.2019, accused Smt. Chandan Kaur and Smt. Jyoti were produced before the court concerned i.e. Ms. Shriya Aggarwal, MM, Patiala House courts, New Delhi. Application for TIP proceeding of accused Jyoti was filed before the court and same was marked to Ld. Link, MM and Ld. Link MM fixed the date of TIP for 03.08.2019. Thereafter, both the accused persons were sent to Judicial Custody as per court order.

7. That on 29.07.2019 & 30.07.2019, efforts were made to arrest the co-accused persons namely Joginder @ Joga, Sangeeta @ Bachchi and Rahul S/o Darshan with the help of accused Sumit but all accused persons are absconding and evading from their arrest."

6. Since the present writ of habeas corpus has been filed on behalf of Petitioner Nos. 4 and 6 who were in custody by virtue of a Court order on the date the writ was filed and none of the other petitioners are in

detention, this Court is of the view that the petitioners have not only suppressed and concealed the material facts but have also not stated true and relevant facts. Consequently, present writ petition and application are dismissed.

7. In fact, the present writ petition is the third habeas corpus petition filed by the different individuals with regard to an investigation being conducted in the murder case of Shahrukh wherein Joginder Singh @ Joga and his other close relatives are prime accused. Today, this Court has dismissed W.P.(Crl.) 1937/2019 by way of a separate speaking order. Since the said order encapsulates all the relevant facts, the said order is reproduced hereinbelow:-

“1. Present writ of habeas corpus and compensation has been filed by the petitioner-mother seeking a direction to the respondents to produce the alleged detenu Mr. Sumit, son of Shri Om Prakash, resident of B-1/114, JJ Colony, Raghubir Nagar, Delhi before this Court.

2. In the present petition it had been averred that the petitioner's son was in the illegal detention of the SHO, Police Station Sagarpur from 15th July 2019 3.30 p.m. It had also been averred in the petition that the police illegally took the petitioner's son in a white Swift car on 15th July 2019 in connection with the murder of Shahrukh allegedly committed by one Joginder Singh @ Joga of Sagarpur.

3. When the matter was taken up for hearing on 18th July, 2019, at the first call, Mr. Rahul Mehra, learned standing counsel for State had handed over a copy of the status report and shown us photocopy of the General Diary and Case Diary to contend that three notices had been issued under Section 160 Cr. P.C. to Sumit to appear before police in connection with the aforesaid murder case on 15th, 16th and 17th July, 2019. In the status report it was averred that though initially

Sumit was a suspect, but on interrogation it had been found that he had no role to play in the alleged murder. Mr. Rahul Mehra had also orally informed us in the morning session that Sumit had been allowed to leave the police station with Roop Singh in the evening of 17th July, 2019. Roop Singh who was present in Court had confirmed the said fact.

4. However, as the learned counsel for petitioner still contended that Sumit was in detention of the police, we directed Mr. Rahul Mehra, learned standing counsel for State to search and produce Sumit in Court, post lunch.

5. Sumit was produced before this Court by Roop Singh @ Roopa post lunch on 18th July, 2019.

6. In response to queries from this Court, Sumit orally stated that he had been summoned for interrogation on 15th, 16th and 17th July, 2019 and on each of the said dates, he had been released by the police in the evening. When specifically asked as to where he had been residing on 15th, 16th and 17th July, 2019, Sumit had stated that he was staying with his relative Roop Chand @ Roopa.

7. At that stage, learned counsel for petitioner had stated that Sumit was deposing under fear and that he would like to file an affidavit. Learned counsel for the petitioner further stated that Roop Chand was a police informer. He also stated that as the petitioner was seeking compensation in the present case, the writ petition would have to be adjudicated by this Court.

8. Subsequently, Sumit and petitioner filed affidavits dated 19th July, 2019. Sumit in the said affidavit stated that he had been kidnapped by police personnel wearing civil clothes on 15th July, 2019. In the said affidavit, Sumit averred that he had been abused and physically manhandled by the police. He further averred that he had made the statement before this Court on 18th July, 2019 under fear as he had been threatened

by the police officials that if he did not tell the Court that he had been let off every day after a brief interrogation, he would be involved in Shahrukh's murder case. In the said affidavit, it had also been averred that Sumit was forced to sign some printed and blank papers on 18th July, 2019 and as he is illiterate and can only sign in Hindi, he could not read and/or understand the contents of the documents.

9. *Keeping in view the said allegations, we had directed Delhi Police to file a counter affidavit.*

10. *In the counter affidavit it had been stated that during investigation of a gruesome murder case of Shahrukh, the name of Joginder Singh @ Joga, S/o. Hardayal Singh, R/o. RZ/B-1560, Gali No. 6, West Sagarpur, New Delhi had emerged as one of the prime accused. During investigation it was also revealed that one of the close relatives of accused Joginder Singh @ Joga was Om Prakash – the father of Sumit. In the said affidavit it was reiterated that Sumit was residing with his relative Roop Chand @ Roopa on 15th, 16, and 17th July, 2019 and had been produced before this Court by said Roop Chand @ Roopa on 18th July, 2019. Along with the counter affidavit, photocopies of three notices under Section 160 Cr. P.C. as well as general diary were enclosed. The allegations levelled by Sumit against police personnel were vehemently denied as false and baseless.*

11. *Today, learned counsel for the petitioner states that notices under Section 160 Cr. P.C. are nothing but an eye wash as the same had been prepared after filing of the present writ petition. He states that the Delhi Police has adopted a new format for issuing notices under Section 160 Cr. P.C. which gives lucid detail and the respondents in order to fabricate documents had used the obsolete format of notices.*

12. *He further states that the fabrication of the notice dated 15th July, 2019 is apparent from the fact that it mentions the age of Sumit at the top of the notice as 23 years. He*

contends that if it is taken that notice was served at residence of Sumit, wherefrom and how the police came to know about his age prior to the interrogation.

13. He also states that the illegal detention of Sumit is apparent from the fact that the general diary mentions the time of recording as 02:34:05 hours dated 16th July, 2019 and 20:27:01 hours and 03:59:52 hours both dated 17th July, 2019. He states that the said entries prove beyond doubt that Sumit had been interrogated at odd hours on 15th, 16th and 17th July, 2019.

14. Per contra, Mr. Rahul Mehra, learned standing counsel for State on instructions contends that notices under Section 160 Cr. P.C. were issued on 15th, 16th and 17th July, 2019 itself in the proper format as the stationery containing the notices in new format under Section 160 Cr. P.C. have not been received at Police Station Sagarpur. He reiterates that the Police Station Sagarpur is presently issuing notices under Section 160 Cr. P.C. in the old printed format – as had been done in the case of Sumit.

15. Mr. Rahul Mehra, learned standing counsel for State reiterates that Sumit was interrogated during the day and let off in the evening. He states that the entry in general diary is made whenever an official has free time. He clarifies that the time mentioned in the general diary is not the time when the interrogation took place. He states that normally entries in general diary are made when police officials return from their work or at the end of the working day – which may even be at odd hours.

16. Learned standing counsel for State lastly contends that present writ petition has been filed to harass the police officials and to prevent them from investigating the murder case of Shahrukh and also from arresting the prime accused Joginder Singh @ Jagga and his other close relatives who are co-conspirators in the said crime. He emphasises that there

are 142 criminal cases in which Joginder Singh @ Joga is involved.

17. In rejoinder, learned counsel for the petitioner vehemently denies the contention put forward by learned counsel for the State.

18. Having heard learned counsel for the parties, this Court is of the view that the allegation in the affidavit dated 19th July, 2019 made by Sumit are not correct because at the first call in the morning on 18th July, 2019 (i.e. prior to his production before Court), learned standing counsel for State had stated that Sumit was not found involved in the murder of Shahrukh as the wife of the deceased Shahrukh had clarified after seeing petitioner's son Sumit that he was not involved in the death of her husband. The said fact was even mentioned in the status report dated 18th July, 2019 handed over in Court in the morning session. Today, during the course of hearing Mr. Rahul Mehra has clarified that another person also named Sumit, who was actually involved in the aforesaid crime, has been arrested by the police. Consequently, Sumit's allegation that he had made the statement before this Court on 18th July, 2019 in the afternoon session, (i.e., post lunch), because he had been threatened by the police officials that if he did not tell the Court that he had been let off every day after a brief interrogation, he would be involved in Shahrukh's murder case, is not correct.

19. This Court is also in agreement with Mr. Rahul Mehra's argument that the notices issued under Section 160 Cr. P.C. on 15th, 16th and 17th July, 2019 are genuine, in proper format and the time entered in the general diary is not the time when the interrogation of Sumit actually took place.

20. Further, if Sumit is admittedly illiterate (i.e. cannot read and write any language), his affidavit dated 19th July, 2019 is meaningless and has no value in the eyes of law as there is no averment in the affidavit that the contents of the

said affidavit dated 19th July, 2019 had been explained to him in a vernacular language that he understands. Consequently, the affidavit dated 19th July, 2019 is 'not worth the paper that it is written on'.

21. *This Court is of the opinion that there is a 'ring of truth' in the argument of Mr. Rahul Mehra, learned standing counsel for the State that present writ petition had been filed to involve the police officials in court proceedings and to prevent them from investigating the murder case of Shahrukh in an earnest manner as all three writ petitions [W.Ps. (Crl.) 1937/2019, 2099/2019 and 2002/2019] have been filed with regard to different individuals in respect of the same murder case. In fact, two out of ten writ petitioners who are alleged to have been illegally detained and for whom the writ petition of habeas corpus being W.P.(Crl) 2099/2019 had been filed, had been formally arrested and remanded to judicial custody prior to the said writ petition being filed!*

22. *From the pleadings, it is also apparent that on the one hand the petitioner is invoking the writ jurisdiction of this Court to protect her son, but on the other hand petitioner's husband is deliberately not appearing before police. This Court is of the view that the writ jurisdiction cannot be used as a tool to scuttle investigation in a murder case by putting 'fear of Court' in the minds of police officials.*

23. *Consequently, present writ petition being bereft of merits is dismissed and the police is directed to investigate the murder of Shahrukh with earnestness and to ensure that guilty are brought to book in accordance with law."*

8. Since averments in the present petition are apparently false, this Court is of the view that it is a fit case for initiation of *suo motu* criminal contempt proceedings against Petitioner No. 11. (See: ***Louis Vuitton Malletier vs. Mr. Omi & Anr, 2018 SCC OnLine Del 10343***).

9. The Registry is directed to open a separate file (containing a copy of paper book of this petition as also a copy of this order) and place it before appropriate Bench after taking orders from Hon'ble the Chief Justice.

10. Mr. Mir Akhtar Hussain, Advocate, accepts notice on behalf of Parokar. He prays and is permitted to file a reply affidavit within two weeks. The Parokar shall be personally present in Court on the next date of hearing.

List on 21st August, 2019.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 31, 2019

sb