

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.333 of 2020

Arising Out of PS. Case No.- Year-0 Thana- District- Saran

SUMIT KUMAR Son of Shri Shankar Jha Resident of Village - Jagdishpur, P.O.- Aadharpur, P.S.- Muffasil Thana Samastipur, District - Samastipur, Authorized representative of M/s Annapurna Enterprises, a partnership firm having its office at 428A, Brahmpuri, Panjaya Gali No.- 4, Meerut (Uttar Pradesh).

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR, THROUGH THE DIRECTOR GENERAL OF POLICE, BIHAR AT PATNA Bihar
2. The District Magistrate, Saran at Chapra Bihar
3. The Director General of Police, Patna Bihar
4. The Superintendent of Police, Saran at Chapra Bihar
5. The Station Head Officer (S.H.O.), Parsa Police Station, District - Saran Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 342 of 2020

Arising Out of PS. Case No.-160 Year-2020 Thana- PARSA District- Saran

1. SUMIT KUMAR Son of Shri Shankar Jha Resident of Village - Jagdishpur, P.O.- Aadharpur, P.S.- Muffasil Thana Samastipur, District - Samastipur, Authorized representative of M/s Annapurna Enterprises, a partnership firm having its office at 428A, Brahmpuri, Panjaya Gali No. 4, Meerut (Uttar Pradesh).
2. Jitendra Kumar Son of Ram Dulare Resident of - Mahanua, P.O.- Sonah, P.S.- Sonha, District - Basti (Uttar Pradesh)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR, THROUGH THE DIRECTOR GENERAL OF POLICE, BIHAR AT PATNA Bihar
2. The District Magistrate, Saran at Chapra Bihar
3. The Director General of Police, Patna Bihar
4. The Superintendent of Police, Saran at Chapra Bihar
5. The Station Head Officer (S.H.O.) Parsa Police Station, District - Saran Bihar

... .. Respondent/s



Appearance :

(In Criminal Writ Jurisdiction Case No. 333 of 2020)

For the Petitioner/s : Mr.Sanchay Srivastava, Advocate

For the Respondent/s : Mr.Pawan Kumar, AC to AG

(In Criminal Writ Jurisdiction Case No. 342 of 2020)

For the Petitioner/s : Mr.Sanchay Srivastava, Advocate

For the Respondent/s : Mr.Pawan Kumar, AC to AG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

11 11-09-2020 In Cr.WJC No. 333 of 2020 petitioner prays for the following relief(s):-

(I) That the present writ application is being filed for issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Habeas Corpus for a direction to the concerned respondents to produce and release the Driver/Employee, who during his course of employment, of the Milk Tanker belonging to the Petitioner namely, Jitendra Kumar (Male), aged about 30 years, son of Ram Dulare, resident of Mahanua, P.O.- Sonha, District- Basti (Uttar Pradesh) has been illegally arrested and kept in unlawful custody at Parsa Police Station, District- Saran, for no offence at all either by him or by the Milk Tanker driven by him in an illegal and unlawful manner without registration of a formal First Information Report and without producing him before the Learned Magistrate having jurisdiction as mandated by the Code of Criminal Procedure;

II. That the present writ application is being filed for issuance of an appropriate writ(s)/ order(s)/



direction(s) in the nature of Mandamus for a direction to the concerned respondents especially Respondent No.4 & 5 for releasing the Milk Tanker/ Vehicle, engaged in Essential Services (Transportation of Milk), belonging to the petitioner which has been kept in illegal & unlawful custody of Parsa Police Station, District- Saran without any offence whatsoever and without registration of a Formal F.I.R., therefore warranting the immediate intervention of this Hon'ble Court;

III. That the present writ application is being filed for issuance of an appropriate writ/ order(s)/ direction(s) in the nature of Mandamus or any other appropriate writ(s) for direction to the concerned respondents to appropriate compensate the petitioner for loss of business and also to compensate the Driver of the Milk Tanker who has been kept in illegal custody at this time of national Lockdown when the country is fighting with Covid-19 Virus;

IV. And for any other relief(s) for which the petitioner may be found to be entitled to in the present facts and circumstances of the case.”

On 3.6.2020 we had passed the following order, which is reproduced herein below:

“As prayed for, scope of the present petition is confined only with regard to the alleged illegal detention of Sri Jitendra Kumar (male), aged about 30



years, son of Ram Dulare, resident of Mahanua, P.O. Sonah, P.S. Sonha, District Basti (Uttar Pradesh).

According to the petitioner, the said person stands illegally detained with effect from 29th April, 2020 by the police authorities of Parsa Police Station, District Saran and thus far, no FIR stands registered. The detention of the said person is absolutely illegal and without any authority of law.

Sri Prabhu Narayan Sharma, learned Assistant Counsel to learned Advocate General, to obtain instructions.

List tomorrow, i.e., 04.06.2020.”

Subsequently, petitioner has filed yet another petition i.e. Cr. W.J.C. No.342 of 2020 praying for the following relief(s):-

1. That the present writ application is being filed for issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Certiorari for quashing the First Information Report (F.I.R.) in connection with Parsa P.S. Case No. 160 of 2020 dated 03.06.2020 in respect of the offences under Sections 279, 337 and 338 as the same is false, frivolous and completely farce and has been registered in complete haste by the police in order to



save their own skin when caught-red handed by this Hon'ble Court and to concoct a story to harass the petitioner no.2 who was taken into illegal/unlawful custody on 29.04.2020 and kept under illegal detention for more than 1 month along with the Milk Tanker he was driving belonging to petitioner no.1, before his release was secured vide Order dated 04.06.2020 of this Hon'ble Court in Cr.W.J.C. No.333 of 2020 (Habeas Corpus);

II. That the present writ application is being filed for issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Mandamus for a direction to the concerned respondents especially Respondent No.4 & 5 for releasing the Milk Tanker/ Vehicle, engaged in Essential Services (Transportation of Milk), belonging to the petitioner no.1 which has been taken into illegal & unlawful custody by Parsa Police Station, District- Saran without any offence whatsoever and thereafter registration of a Formal F.I.R. has been done after a month to misguide the courts, therefore warranting the immediate intervention of this Hon'ble Court;

III. That the present writ application is being filed for issuance of an appropriate writ/ order(s)/ direction(s) in the nature of Mandamus or any other appropriate writ(s) for direction to the concerned respondents to appropriately compensate the petitioner no.1 for loss of business from the said vehicle due to illegal detention and further to compensate the petitioner no.2 who was kept in



illegal & extra judicial custody at this time of national Lockdown when the country is fighting with Covid-19 Virus for over a month without lodging a F.I.R.;

IV. That the present writ application is being filed for issuance of an appropriate writ/ order(s)/ direction(s) in the nature of Mandamus or any other appropriate writ(s) for restraining the respondents from proceeding with any investigation against the petitioners or the vehicle belonging to the petitioner no.1 in view of the fact that the whole F.I.R. is nothing but a malicious attempt by the Police Officials to save their own skin after they were caught red-handed by this Hon'ble Court while keeping the petitioner no.2 and the vehicle belonging to the petitioner no.1 in illegal detention for more than a month without lodging of F.I.R.:

V. That the present writ application is being filed for issuance of an appropriate writ/ order(s)/ direction(s) in the nature of Mandamus or any other appropriate writ(s) for ex-parte ad-interim stay over all the proceedings connected with Parsa P.S. Case No. 160 of 2020 dated 03.06.2020;

VI. And for any other relief(s) for which the petitioner may be found to be entitled to in the present facts and circumstances of the case.”

It has come on the record that during pendency of the present petition an FIR has been registered; the vehicle stands released and detenue, i.e. driver of the vehicle, was also



stands released by police. As such, we reiterate the scope of the petitions with which this Court is now concerned. The only surviving issue is as to whether detention of the person, if any, prior to the registration of FIR was illegal or not and if so as to whether State is liable to compensate the detinue by way of damages or not.

In view of the same, Sri Sanchay Srivastava, learned counsel for the petitioner, states under instructions that he does not want to press Cr.WJC No. 342 of 2020.

Ordered accordingly.

Cr.WJC No. 342 of 2020 stands disposed of.

A supplementary counter affidavit is said to have been filed.

List on 18.9.2020.

(Sanjay Karol, CJ)

(S. Kumar, J)

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