

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

111)

CRWP no. 9513 of 2020 (O&M)
Date of Decision: 18.12.2020

Mohammad Shaukeen

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Talim Hussain, Advocate, for the petitioner.
Mr. B.S. Virk, DAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

On 01.12.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

By this petition, the petitioner seeks issuance of a writ in the nature of 'habeas corpus', for appointment of a warrant officer to visit the spot or issuance of a direction to respondents no.1 and 3 to produce/release the detenue (wife of the petitioner) namely Rahuna and to produce her in the court from the illegal custody of respondents no.4 to 10 who have detained her in the house of one Mukesh son of Sumer at village Kakrali, Tehsil Alwar, District Alwar, Rajasthan after kidnapping her from Punhana, District Nuh, Haryana, despite the protection order of this court (copy Annexure P-1).

He further seeks issuance of direction to respondents no.1 to 3 take immediate legal action against respondents no.4 to 10.

The State having filed a reply and with the petitioners wife (the alleged detainee) returned to him, this petition otherwise would have been rendered infructuous; however, learned counsel for the petitioner submits that in fact, he himself (the learned counsel) has been detained in Police Station Sadar, Sohna, District Gurgaon and is sitting on the floor and has joined the court proceedings through video conferencing vide his mobile phone.

Mr. Surender Singh, learned AAG, Haryana, is directed to immediately take instructions from the Commissioner of Police, Gurugram, as to why the counsel for the petitioner has been detained in the said police station.

It is made clear that if the clear instructions are not given by the Commissioner of Police, Gurugram, to the learned State counsel, he shall be summoned to court tomorrow.

XXXXX XXXXX XXXXX

This case has been taken up again after learned State counsel had taken instructions from the Commissioner of Police, Gurugram. He submits that as per the Commissioner, learned counsel for the petitioner was participating in the 'Kisan Aandolan' and trying to block the road and that there is CCTV footage of his participation.

Obviously therefore, the cause of action is completely different and consequently no comment whatsoever is made by this court as to the correctness of the instructions received by learned State counsel or as to the contentions made by counsel appearing for the petitioner in this case, who now is not contactable as his mobile phone is stated to be out of coverage area, as per the co-ordinator of the video conference.

Whether the mobile phone of the petitioner has been switched off or taken away by the police authorities, is again not being commented

upon by this court, but with the Commissioner of Police, Gurugram, to ensure that the counsel for the petitioner in this case (Mr. Talim Hussain, Advocate) is not kept in any illegal custody.

The Commissioner of Police, Gurugram, is directed to file an affidavit giving therein the circumstances in which the counsel was put under arrest, annexing therewith the daily diary/general diary report pertaining to his arrest and any release thereafter.

Adjourned to 09.12.2020.

xxxxx xxxxx xxxxx

After the above order was dictated, Mr. Talim Hussain, Advocate, has now joined the video conference which he submits is again from the police station and that as a matter of fact he was not taking part in any agitation, as he alongwith his companions were simply going to Delhi when they were manhandled and arrested.

Obviously, to repeat, that being a separate cause of action altogether, nothing further is being observed by this court, till the affidavit of the Commissioner of Police is received.

Though, at this stage, Mr. Surender Singh, learned AAG, Haryana, submits that Mr. Talim Hussain has been released and was never actually arrested, Mr. Talim Hussain has again submitted that he is still in the police station (with the SHOs' room also being visible, with some police officials sitting there)."

Obviously, as has been recorded above, in the last paragraph of the first page of that order, as regards the petitioner himself, his grievance stood redressed and therefore the petition had in fact been rendered infructuous; however, in view of what had been contended by learned counsel for the petitioner that he himself had been detained, the matter had

been kept pending, with the Commissioner of Police, Gurugam, directed to file an affidavit, giving the circumstances in which the counsel had been put under arrest, also annexing therewith the daily diary/general diary report, pertaining to his arrest and release thereafter.

It has been also recorded in the last part of that order after the aforesaid direction had been given, that learned State counsel who had appeared on that date, had stated (on instructions received by him), that the counsel for the petitioner had been released and was never actually arrested, though learned counsel for the petitioner submitted at that stage that he was still in the police station which seemed to be correct.

Be that as it may, thereafter on 09.12.2020, it was recorded in the order that no affidavit of the Commissioner of Police had been filed and that counsel for the State could not appear on that date due to some personal difficulty.

Today, an affidavit of the Commissioner of Police is on record, dated 05.12.2020, giving therein the circumstances of the detention of learned counsel along with many others, essentially due to the reason (as per the affidavit) that 24 persons were stopped coming from the side of Mewat to Gurugram, including the learned counsel, and despite they having been informed of the order passed under the provisions of Section 144 of the Cr.P.C., they did not pay any heed to the instructions of the police and tried to breach the peace, after which 21 of them were taken to the police station in buses and eventually proceedings under Section 107/151 of the Cr.P.C. were also initiated against them, and they were placed under arrest.

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Learned counsel however submits that in fact the said affidavit is contrary to what was recorded by this court in the order dated 01.12.2020, to the effect that he had not been arrested.

Having considered the aforesaid, it is to be again observed that this court had continued with this petition only because of the 'emergent' situation seemingly arising on the contention raised by the counsel for the petitioner as regards his own illegal detention but the main petition itself had been rendered infructuous. Consequently, it is disposed of as such.

Naturally, as regards any illegal detention of the counsel for the petitioner, as he is even now contending, he would have his independent remedies against any such action, for which even liberty need not be given, with such liberty always being available with any citizen.

If any such proceedings are initiated by learned counsel, obviously he would also be at liberty to refer to the affidavit of the Commissioner of Police, Gurugram, dated 05.12.2020, as has been placed on record in this case.

Again naturally, this court has not made any comment on the merits either of the contention of the learned counsel for the petitioner as regards his illegal detention, nor in fact on the correctness of what is stated in the affidavit of the Commissioner of Police, Gurugram, which would be considered by a competent court in any appropriate proceeding, if initiated by Mr. Talim Hussain.

18.12.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No