

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

252)

CRWP-1021 of 2020

Date of Decision:09.09.2021

Jaswant Brar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Deepak Goel, Advocate, for
Mr. Yogesh Goel, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab

Mr. J. S. Brar, Advocate,
for respondents no.5 and 6.

AMOL RATTAN SINGH, J. (ORAL)

On 29.01.2020 the following order had been passed by this court (a
co-ordinate Bench):-

“The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus for appointment of a warrant officer to produce Sadhu Singh aged about 85 years who has been illegally detained by respondents no.5 and 6 and to hand over his custody to the petitioner for his medical treatment and to save his life.

Notice of motion.

On the asking of the Court, Mr. Sandeep Singh Deol, D.A.G. Punjab accepts notice on behalf of respondents no.1 to 4-State. Copy of the paper book supplied to the learned State counsel, who seeks

time to complete his instructions.

Adjourned to 26.02.200.

Notice to respondents no.5 and 6 be also issued for that date on filing of process fee.

In the meanwhile, respondent no.2-Senior Superintendent of Police, Moga is directed to look into the matter personally and submit a report on the next date of hearing.”

Thereafter on 26.02.2020 respondents no.5 and 6 had been directed to produce the alleged detainee, i.e. Shri Sadhu Singh, in court on the next date of hearing, i.e. 17.04.2020, but with the matter not having come up thereafter till 02.07.2021 (on account of ongoing pandemic), he was directed to be present *via* video conferencing on the next date of hearing.

Consequently, it has been recorded in the order dated 16.08.2021 that though he had been produced before the court through video conferencing, however due to some technical problem, no actual communication could be made with him by the court.

The hearing of the matter was therefore adjourned till today.

Today, the alleged detainee, i.e. Shri Sadhu Singh has been produced in court and he seems to be a very old man and upon query to him, he states that he is about 80 years old.

He has been asked where he stays and with whom, upon which he has stated that he lives in village Darapur, District Moga, with his sons, namely Kulwant Singh and Omkar Singh (seen to be respondents no.5 and 6 in the petition).

Upon a query put to him as to whether he is living there of his own

will or is being forced to reside there, he has stated twice that he is staying there wholly voluntary.

That being so, I would actually see no reason to continue with this petition whatsoever.

Mr. Deepak Goel, Advocate, today appears for Mr. Yogesh Goel, Advocate, and submits that in fact the petitioner wishes to withdraw this petition, only because the petitioner lives abroad. However, he not being the counsel in whose favour a power of attorney (*vakalatnama*) is on record, it cannot be withdrawn on anyone else's statement in the absence of an affidavit of the petitioner.

This petition is one filed by another son of the alleged detainee, with the said son, i.e. the petitioner, admittedly living abroad most of the time in England/Germany, he being a German citizen. (That fact is also mentioned in paragraph 2 of the petition itself).

A query has been put to the alleged detainee (Shri Sadhu Singh), as to whether he wishes to live abroad with the petitioner, to which he has emphatically said "no". (That question has been put to him through learned State counsel as, being tired, he has sat down behind and is unable to hear this court, and otherwise also seems to be slightly hard of hearing; but with all questions put to him very obviously having been understood by him and he having replied accordingly before this court).

That being so, I see absolutely no reason to continue with this petition, especially in view of the fact that an affidavit has also been filed by the SSP, Moga, dated 26.02.2020, stating therein that an enquiry was got conducted

and the alleged detinue was produced in the court of the learned Addl. Chief Judicial Magistrate, Moga, on 03.02.2020 for recording his statement under the provisions of Section 164 of the Cr.P.C.; wherein he also categorically stated that he has three sons, i.e. Jaswant Singh, Omkar Singh and Kulwant Singh, with Jaswant Singh, i.e. the petitioner, residing abroad for the past about 40 years and that during that period he had never provided any daily necessities to him.

Yet again, he stated before that court also (as per the said affidavit), that he was residing with his son Omkar Singh 'with his own consent'.

The SSP has also stated that the statements of other respectable persons of the locality were recorded, and as per that enquiry it was found that Shri Sadhu Singh was residing with Omkar Singh of his own accord and had never been detained by either Omkar Singh or Kulwant Singh, as has been alleged in the petition.

Consequently, this petition is dismissed with costs of Rs.50,000/- to be paid by the petitioner to the alleged “detinue”, i.e. his father, Shri Sadhu Singh, who has unnecessarily been troubled to come, at his age, all the way to this court, for no reason whatsoever.

It may be observed here that though counsel for the petitioner (appearing today) has stated that he wishes to withdraw the petition, yet, with a very old man very obviously having been unnecessarily harassed, even if the petitioner were to withdraw the petition, costs would still have been imposed by this court.

The said amount be paid to him through the bank account of Shri Sadhu Singh, within two months from today.

It is also to be noticed that Shri Sadhu Singh has been identified by Mr. J. S. Brar, Advocate, as also by ASI Sukhmender Singh, who has accompanied him from Police Station Sadar, Moga.

September 09, 2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes