

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.541 of 2021

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

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RASHMI KUMARI, Wife of Krishna Mohan Singh, Resident of Village- Ashiyana Azad Lane, Chaudhary Tola, Sampatchak, P.O.- Mahendru, P.S.- Sultanganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patan Patna
2. The Director General Police, Government of Bihar Bihar
3. The Senior Superintendent Police, District- Patna Bihar
4. The Station House Officer, Khagaul Police Station, Patna. Bihar
5. The Station House Office, Alamganj Police Station, District- Patna. Bihar
6. Station House officer, Shastri Nagar Police Station, Patna. Bihar
7. Din Dayal Singh Son of not known Sub - Inspector, Shastri Nagar Police Station, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate
	:	Mr. Arvind Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Prabhu Narain Sharma, A.C. to A.G.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-10-2022

Heard Mr. Dinu Kumar, learned counsel appearing on behalf of the petitioner and Mr. P.N. Sharma, learned AC to learned Advocate General representing the State of Bihar.

2. The petitioner is related to one Saket Bhushan, who has been described in the present writ petition as "maternal



devar" of the petitioner.

3. In nutshell, it is the petitioner's case is that Saket Bhushan was arrested either by the officials of Khagaul Police Station or a Special Investigation Team(SIT) on 31.01.2021 at 8:30 pm from 'Patna Tyre Mall' situated near 'Saguna Morh' in connection with a murder case. The petitioner has filed the present writ application with a grievance that immediately after his arrest on 31.01.2021, said Saket Bhushan was not produced before the Judicial Magistrate and even after expiry of 24 hours of his arrest he had not been produced before the Magistrate. It is the petitioner's case that the arrest and detention of Saket Bhushan is illegal and contrary to the law laid down by the Supreme Court in case of *D.K. Basu vs the State of West Bengal reported in (1997) 1 SCC 416*. The petitioner is accordingly seeking a declaration to the aforesaid effect and a direction commanding the respondents State of Bihar to produce him forthwith. The petitioner is seeking a further direction to award due compensation to the petitioner/ Saket Bhushan to recompense his illegal detention after his arrest without producing him before the concerned Magistrate within 24 hours from his arrest on 30.01.2021 at 8:30 pm.

4. Mr. Dinu Kumar, learned Counsel appearing on



behalf of the petitioner has argued that the arrest of Saket Bhushan and his subsequent detention without his production before the concerned Magistrate is in breach of the provisions under Section 41A, 41B, 41D, 50, 50A and 56 of the Code of Criminal Procedure. Such breach of the statutory provisions constitutes offence punishable under Section 166 of the Indian Penal Code. He has argued that the victim of illegal detention by the police is legally entitled also for due compensation.

5. He has argued, based on pleadings in the writ petition, that for illegal arrest and illegal detention, humiliation and mental torture and harm in reputation, said Saket Bhushan is entitled for compensation to the tune of Rs. 5 lakhs. It is also his submission that said Saket Bhushan was apprehended with a motorcycle which too has not been produced before the learned ACJM, Patna City. He has placed reliance on a Division Bench decision of this Court rendered on 22.12.2020 in CWJC No. 333 of 2020 in support of his contention.

6. The writ petition was filed on 31.08.2021 and came to be registered on 05.04.2021. A counter affidavit was earlier filed on 08.10.2021 sworn by the City Superintendent of Police (Central) Patna. In the said counter affidavit, a preliminary objection has been taken over maintainability of the writ



petition with a plea that said Saket Bhushan is neither missing nor is in custody/detention. It has been stated in paragraph 6 of the counter affidavit as under :-

'That other allegations leveled by the petitioner against the respondent authority are also not maintainable as being devoid of merit. Saket Bhushan was never arrested by Khagaul PS in any case, rather he was brought by a police officer of Shastri Nagar PS on 02/02/21 at 21:45 hours in connection with an enquiry in the murder of one Rupesh Kumar Singh, the airport station manager of Indigo and after the enquiry he left the police station premises on 03/02/2021 at 18:00 hours safely without any grievance after executing bond in presence of a witness. Saket Bhushan has mentioned in his bond that he is safely leaving for his house after recording his statement. He and one witness namely Manoranjan Kumar put their signature on the bond paper voluntarily. In this respect a SD entry no. 90 at 18:00 hours was also made.'

7. It has further been stated that a Special Investigation Team (SIT) was constituted to investigate Shastrinagar Police Station Case No. 23 of 2021 in connection with the murder of one Rupesh Kumar Singh. During the course of meticulous investigation, the SIT had scrutinized various CCTV footages revealing that a white colour Apache



motorcycle and a black colour *Pulsar* motorcycle were used in commission of the crime. Accordingly, the SIT as well as the police personnel of Shastrinagar Police Station were continuously looking for further information in respect of the suspects and the two vehicles used in the crime. It has further been stated that based on scientific investigation i.e. analysis of CDR (Call Detail Report) & CCTV (closed-circuit television) footage and upon tracing the path traversed by the suspects, the SIT formed a reason to believe that the suspects had come from a locality called Alka Colony. On further enquiry, the police learnt that said Saket Bhushan possessed a black *Pulsar* motorcycle and was residing in Alka Colony. It further emerged that he had a criminal history and was once remanded in connection with a criminal case. Based on reasonable suspicion, the SIT and Shastrinagar Police were on a constant lookout for Saket Bhushan and other suspects. On 02.02.2021 at 17:00 hours, vide Station Diary Entry No. 58, one Sub-Inspector of Police of Shastrinagar Police Station proceeded for evening patrolling duty, vehicle-check, and conducting raid in connection with the said Shastrinagar P.S. Case No. 23 of 2021, along with armed police force. The said officer returned at 09:45 hours at the police station and brought Saket Bhushan and



one Rishiraj for interrogation and enquiry in connection with the said murder case. A *Pulsar* motorcycle, which was in possession of Saket Bhushan bearing registration No. BR01DH-5153 was also brought to the Police Station. On demand, the persons brought to the police station failed to produce the papers before the police for ascertaining its ownership and accordingly the *Pulsar* motorcycle was kept safely at the premises of Shastrinagar Police Station for the verification of its registered owner. It is further stated in the counter affidavit that during the course of investigation, Saket Bhushan disclosed his proximity with the prime accused of the case Rituraj. He further disclosed that Rituraj along with his friend Chhotu had come to his (Saket Bhushan's) residence on 12.01.2021 between 09:00 to 09:30 hours on a white colour *Apache* motorcycle. Saket Bhushan is said to have disclosed certain more facts as have been mentioned in the paragraph 10 of the counter affidavit about the prime accused Rituraj. Rituraj was subsequently arrested on 02.02.2021 itself, who it is stated, confessed before the police about his role in commission of the offence and the fact that Rituraj used to visit the residence of Saket Bhushan with his friends frequently.

8. This is how the respondents have justified the



requirement of interrogation of Saket Bhushan by the police in connection with the criminal case. It has been specifically stated in paragraph 12 that Saket Bhushan was brought to the police station for interrogation at 21:45 hours on 02.02.2021 in respect of which entry No. 66 has been made in the Station Diary. After interrogation, Saket Bhushan had left the police station at 18:00 hours on 03.02.2021, upon signing a bond in presence of the witnesses, without any objection, *vide* Station Diary Entry No. 90. It has been accordingly denied that Saket Bhushan was detained by the police for more than 24 hours.

9. The petitioner has relied on certain newspaper clippings in support of the claim raised in the writ petition, in respect of which it has been stated in the counter affidavit that the same were not authentic.

10. A reply has been filed to the said counter affidavit by the petitioner. In the reply it has been reiterated that Saket Bhushan was arrested on 30.01.2021, though no case was registered against him. In respect of the bond signed by him, as stated in the counter affidavit, a plea has been taken that signature of Saket Bhushan was obtained on a blank paper by the police, which has been used as 'personal-bond', later. The petitioner has alleged manipulation in respect of Station Diary



entries. In respect of the motorcycle, it has been stated that Saket Bhushan had sent a mail on 23.09.2021 for the release of *Pulsar* motorcycle.

11. From the pleadings on record, it is, however, not in dispute that the petitioner was not under detention nor in custody as on the date of filing of the present criminal writ application, seeking issuance of a writ in the nature of writ of *habeas corpus*.

12. When this case was taken up by a co-ordinate Bench of this Court on 16.11.2021, the Court noticed that the State was not in a position to satisfy the Court's query regarding provision of law under which the motorcycle was seized and was being retained in the police station. The petitioner was allowed by this Court to implead the concerned Station House Officer of the police station and one Din Dayal Singh, a Sub-Inspector of Shastrinagar Police Station as respondents No. 6 & 7 with a direction to learned counsel for the State to seek instructions regarding the acts of omission and commission on their part in connection with seizure and detention of motorcycle in question and file a counter affidavit in this regard, on their behalf. A natural inference which can be easily drawn from the said order of this Court dated 06.11.2021, that the Co-



ordinate Bench was not dissatisfied with the State's stand taken in its counter affidavit to the extent the same related to the petitioner's plea regarding illegal detention of Saket Bhushan.

13. The SHO of the police station has filed a counter affidavit, wherein it has been stated that as Saket Bhushan had not produced any paper in relation to the motorcycle, the same remained at the police station, merely for verification of its ownership. The vehicle remained at the police station premises safely and no one claimed any ownership over the said motorcycle. It has also been stated that a letter was written by the SHO on 13.02.2021 to the District Transport Officer, Patna for verification of the motorcycle and its ownership. Neither the petitioner nor Saket Bhushan ever approached the police station with ownership papers of the vehicle. Subsequently, on 23.11.2021, a verification report came to be received by the District Transport Officer, Patna issued on 29.09.2021 to the effect that this petitioner is the owner of the motorcycle. On 23.11.2021, the petitioner was informed to receive the vehicle and that the petitioner is at his discretion to receive the vehicle.

14. Mr. Prabhu Nath Sharma, learned AC to learned Advocate General has submitted that in view of the admitted fact that Saket Bhushan is not under illegal detention nor was in



police custody or under detention otherwise, on the date of filing of this writ application, this writ application seeking issuance of writ of *habeas corpus* is not maintainable.

15. In our opinion, based on the pleadings on record, the petitioner has not been able to establish the fact as asserted in the writ petition that Saket Bhushan was made to remain in police custody after he was brought to the police station, for more than 24 hours.

16. In such view of the matter, in our considered opinion, this writ petition seeking issuance of a writ in the nature of writ *habeas corpus* is not maintainable and deserves to be dismissed, as no case of illegal detention is made out based on the pleadings on record and, therefore, no question of award of compensation in writ jurisdiction arises.

17. Further, it is the petitioner's own case that for the first time in September 2022, she wrote to the Senior Superintendent of Police, Patna for handing over the *Pulsar* motorcycle. There is no clue as to what made the petitioner wait for such a long period for claiming her right over the motorcycle. She has not disputed the case of the respondents that no ownership papers were presented before the police by anyone in respect of the said motorcycle.



18. In our opinion, the petitioner has not been able to make out a case of seizure of motorcycle by the police. The person, who was in possession of the motorcycle, was asked to show the ownership documents, which he was not possessing. It is the case of the respondents that he was merely asked to produce the ownership papers.

19. In any case, release or otherwise of motorcycle cannot be a subject-matter of a writ proceeding seeking issuance of a writ in the nature of writ of *habeas corpus* under Article 226 of the Constitution of India. We are not inclined to enter into the controversies regarding the motorcycle in question, particularly in view of the stand taken on behalf of the State in its counter affidavit as noted hereinabove.

20. We, therefore, do not find any merit in this writ application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J):- I agree

(Khatim Reza, J)

Rajesh/Nishant

AFR/NAFR	NAFR
CAV DATE	14.09.2022
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