

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

204

CRWP-788 of 2019

Date of Decision:22.07.2022

Varun Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Abhaysher Singh, Legal Aid counsel,
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab

Mr. Rajesh Mehta, Advocate,
for respondent no.6.

AMOL RATTAN SINGH, J. (ORAL)

This petition has remained pending since the year 2019, with the prayer therein being that a person by the name of Chandan Kumar (stated to be the brother of the petitioner), had been illegally detained by respondent no.3, i.e. the In-charge/Station House Officer, Police Station B-Division Urban, Sultanwind Gate, Amritsar.

Notice having been issued in the petition and a warrant officer ordered to be appointed to 'conduct a raid' on the aforesaid police station, vide an order passed by this court on 08.09.2019, thereafter the warrant officer submitted his report dated 10.09.2019, eventually stating to the following effect:-

“In compliance to the orders of the Hon'ble Court, it is fairly submitted that undersigned Chandan Kumar S/o Gulab Singh R/o

3436, Gali Kakezian Katrer Bagan, Amritsar. He was found available in police lock up of P.S. 'B' Division Amritsar at the time of my visit at 00:50 AM dated 09/09/2019. As per the statement of ASI Manjit Sing (1406) he is in legal custody as he has been arrested in connection with complaint dated 08/09/2019 (at Flag 'M') submitted by Rajesh Kumar R/o 109, Rani Ka Bagh, Amritsar and in this regard, necessary entry has been made in DDR Register at Sr. No.39 dated 08/09/2019 at 21:30 PM (at flag 'X'). Alleged detainee denied all version of night duty officer and stated that he was brought to police station on 05/09/2019 (at Flag 'Y' and 'Y1'). As per the orders of Hon'ble Court regarding C.C.T.V. footage of the four cameras installed in police station, Instructions given to Incharge to keep intact and arrange to produce the C.C.T.V. footage before Hon'ble Court on 10/09/2019 and Incharge assured undersigned in his statement that all footage of C.C.T.V. cameras installed in police station; w.e.f. 05/09/2019 to 09/09/2019 will be submitted before the Hon'ble Court (at Flag Z). On the asking of petitioner, visit closed and undersigned returned to Chandigarh. Accordingly report is submitted before the Hon'ble Court.

At 10:30 AM dated 10/09/2019, petitioner in the instant petition informed the undersigned that he is being chased by the police and police official might detained him before reaching in Hon'ble High Court and he made this call from the mobile no.8053323023 and undersigned asked him to contact his lawyer."

Thereafter, on 17.10.2019, this court had directed the Commissioner of Police, Amritsar, to file an affidavit annexing therewith all DDR entries with regard to the arrest/detention of the alleged detainee (Chandan Kumar) including any entry with regard to him being summoned to join investigation; and with the Commissioner further directed to also annex therewith footage of the CCTV

cameras (installed in the police station), recorded from 05.09.2019 till the time that the warrant officer had entered the police station, with such CCTV footage to cover all entry and exit points to and from the police station.

The said CCTV footage alongwith the affidavit of the Commissioner of Police was placed on record, as recorded in the order dated 13.11.2019.

Thereafter the Commissioner of Police filed another affidavit dated 30.12.2019 which has again been referred to by learned counsel for the petitioner, to submit that as stated in paragraph 4 thereof, the aforesaid Chandan Kumar was found to have entered the police station at 21:19:48 hours (09:19 p.m. approximately), accompanied by a Head Constable; and with respondent no.4 (Rajesh Kundra) found to have entered the police station at 21:22:36 hours on the same night. Eventually Chandan Kumar was brought out of the lock up upon the warrant officer reaching the police station on the intervening night of September 08/09.2019, at 00:45 hours.

In paragraph 5 of the said affidavit, it is also stated by the Commissioner of Police that from the enquiry conducted in the matter, it stands proved that Chandan Kumar was kept in illegal detention “for taking preventive action against him vide DDR entry no.39 dated 08.08.2019”, such illegal detention being by SI Lakhwinder Singh of Police Station B-Division, Amritsar, with departmental action recommended to be initiated against him.

Before that, another affidavit dated 14.12.2021 was filed by the Commissioner of Police, Amritsar, as has been pointed to by learned counsel for the State, wherein it is stated in paragraph 6 that departmental action was taken against two police officials, i.e. the SHO of the police station at that time

(Inspector Gurwinder Singh) and the Addl. SHO, i.e. Sub-Inspector Lakhwinder Singh, and with the departmental enquiry having concluded, with five years service of both the officials having been forfeited with cumulative effect.

He again thereafter points to paragraph 9 of the affidavit dated 30.12.2019, filed by the Commissioner of Police, to submit that in fact FIR no.240, dated 29.12.2019, had been registered at Police Station B-Division, Amritsar, alleging therein the commission of an offence punishable under Section 342 of the IPC.

Mr. Rana, learned DAG, Punjab, submits that, as per his instructions, even the report under Section 173 of the Cr.P.C. in the context of that FIR has been submitted to the competent court.

That being so, with the detainee having been released in 2019 itself and thereafter with action also taken against the erring officials, though various orders have been passed by this court thereafter and other affidavits have also been filed by the different officers, it is not considered necessary to refer to them for the purpose of this petition; and though Mr. Mehta, learned counsel appearing for the aforesaid SI Lakhwinder Singh (respondent no.6.), submits that the enquiry against the said respondent is wholly erroneous and in fact the CCTV cameras do not disclose any such illegal detention, no comment thereupon is made by this court, with obviously the said respondent always at liberty to take his remedy against either in departmental action taken against him, and obviously in respect of the criminal proceedings that are stated to have been launched against him.

At this stage, Mr. Mehta however points to the affidavit dated 17.08.2021 filed by the said respondent (vide CRM-W-971 of 2021), from which

he points to Annexure R-15, which is seen to be a copy of a petition bearing CRWP no.2763 of 2020 filed by Sangeeta Devi wife of Chandan Kumar, Chandan Kumar himself and the petitioner in the present petition, i.e. Varun Kumar, seeking protection of their life and liberty, which allegedly was in danger at the hands of respondents no.5 to 9 therein, two of those respondents being Rahul Kundra and Rajesh Kundra (who have also been impleaded in the present petition as respondents no.5 and 4, respectively, though in their capacity as partners of one M/s M.K. Traders).

Respondents no.7, 8 and 9 in that petition are seen to be one Anil Sharma, Sales Officer in Dabur India Ltd., (with him stated to be working “under M.K. Traders”) and Head Constable Sikandar Singh and the Addl. SHO, Lakhwinder Singh (respondent no.6 herein).

Mr. Mehta points to the comparative chart of some contradictions (as contended before this court), between the pleadings made by the petitioner in the present petition and the pleadings in that petition, which he submits are completely contradictory to each other.

He further submits that the said petition was disposed of by this court (co-ordinate Bench) on 14.07.2021, duly noticing the reply filed by the Deputy Commissioner of Police, Detective, Amritsar City, and also referring to the orders etc. passed in this petition.

All in all, his contention is that the petitioner and his brother have been making contradictory statements and on the basis of such contradictory statements respondent no.6 has suffered an order of punishment in departmental proceedings and is now also facing criminal proceedings.

Having considered the above, as already observed, this is a petition seeking issuance of a writ of habeas corpus, and with the detenue having been released and action taken against those who were found guilty of such illegal detention, respondent no.6 is obviously always at liberty to challenge any order passed against him and to take his defence in the criminal proceedings ongoing against him.

Learned counsel for the petitioner on the other hand has referred to a judgment of the Supreme Court in **Union of India and others v. Luithukla (Smt.) and others** 1999(9) SCC 273, to submit that though a detenue may have been got released after a petition seeking a writ of *habeas corpus* is filed; however the court would continue with the petition and eventually award even compensation to the detenue, and therefore, the enquiry got conducted by the Commissioner of Police, Amritsar, having found respondent no.6 and even the SHO responsible for illegal detention of Chandan Kumar, this court would also award appropriate compensation to him.

Learned State counsel submits that the SHO himself was found only guilty of lack of supervision, though of course respondent no.6 was found guilty of having illegally detained the aforesaid Chandan Kumar (which learned counsel for respondent no.6 again has vehemently refuted), it is considered appropriate that the detenue would be paid Rs.50,000/- by respondent no.6 in view of the enquiry conducted, and the affidavits to that effect filed by the Commissioner of Police, Amritsar.

Hence, to repeat, with the person found to have been illegally detained as per the affidavit of the Commissioner of Police, Amritsar, having been duly

released and an enquiry in the matter having been held and taken to its logical conclusion, there would be no reason to further continue with the present petition, which is therefore disposed of with the direction given hereinabove.

July 22, 2022
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No