

CRWP No-8432 of 2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No-8432 of 2021
Reserved on: 03-08-2023
Date of Decision:10-08-2023

Manish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sudhanshu Makkar, Advocate for the petitioner.

Mr. Rajat Gautam, Addl.A.G., Haryana.

ANOOP CHITKARA, J.

Fearing for life and liberty at the hands of the police officials, respondents no. 6&7, invoking the fundamental right of life guaranteed under Article 21 of the Constitution of India, the petitioner had come up before this Court seeking various reliefs including transfer of investigation to CBI or any other independent agency; departmental action actions erring police officials; compensation to the petitioner, and in para 21(c) also seeking direction against the erring respondents for their inaction in protecting life and liberty of the petitioner.

2. The petitioner alleges that on August 20, 2021, when he alongwith his cousin brother Rajiv @ Naveen were going from village Dhani Riwasa to Tosham and had stopped at Hisar workshop in Tosham. At that time at about 11:00 a.m., four persons who were armed, alighted from one Mahindra Bolero Car and manhandled them. After that they took the petitioner to the police Station Hansi where he came to know that those persons were members of CIA staff at Hansi police station. On taking the petitioner to the police station, they inquired from him about one Kapil s/o Mandroop in relation to some FIR registered against him at Police Station Baas. The petitioner expressed his inability and lack of knowledge to have any such information about Kapil and his location then the police officials especially respondent No.7-Vijay Tanwar inflicted brutal third degree torture upon him. The petitioner was beaten by iron rods, waist belt, fist and legs blows and was humiliated. After that the said respondent No.7 demanded sum of Rs.8 lacs to release him. In overall the petitioner was kept in illegal

detention for four hours and then they took him to the private hotel where he was again given beatings. In the meantime, the family members of the petitioner started inquiring about his whereabouts and subsequently the police officials made him travel and later released him. The petitioner has given detail of torture inflicted upon him in paragraph 4 to 13.

3. The petitioner filed various complaints about such torture and on the failure of the government officials to take any action he had filed the instant writ petition before this Court.

4. Vide order dated 06.09.2021, a Co-ordinate Bench of this Court had directed to dispose of the writ petition by directing the respondent No.3 to decide the representation in a time bound manner.

5. Feeling aggrieved, the petitioner approached Hon'ble the Supreme Court and vide order dated 28.01.2022, Hon'ble the Supreme Court remanded back the matter to this Court permitting the petitioner to take further pleas apart from the undecided pleas. Later on the petitioner filed the amended writ petition. In Paragraph 21 of the amended writ petition dated 17.04.2023, the petitioner claims that following questions of law emerges for determination by this Hon'ble Court:-

" a) Whether the illegal detention of the petitioner from 20/08/2021 (1100 hrs) to 22/08/2021 (1900 hrs) by the respondent no. 5, without any complaint or warrants against the petitioner is violative and against the constitutional right of liberty as enshrined under Article 21 of the Constitution of India?

b) Whether the respondent no. 5 could employ third degree torture without there being any complaint or warrants against the petitioner?

c) Whether the in-action of the official respondents to not to protect the life and liberty of the petitioner and to not to register case against the delinquent officer-respondent no. 5 for his act of illegal detention, physical torture upon the person of the petitioner and demanding ransom amount of Rs. 8 Lakh is also illegal and tantamount to breach of their oath to protect the citizens and perform their duties without partisanship?"

6. In response, Status report dated 02.09.2022 was filed by the concerned DySP and it would be appropriate to reproduce the following paragraphs of the report:-

"2. That the copy of the order dated 06.09.2021 was received in the office of respondent No. 3 through E-mail with paper book

on dated 08.09.2021. After receiving the same, direction was issued to the security In-charge, Bhiwani and SHO, P.S. Tosham to ensure the protection of the petitioner. The petition also included reference to a pending complaint before SHO, Tosham. After that the matter was entrusted to the then DSP, Siwani for further enquiry. The then DSP, Siwani vide its enquiry dated 01.10.2021, submitted his findings, after joining the petitioner, his relatives friends and other concerned parties (officials of CIA, Hansi) in the enquiry. As per representation dated 27.08.2021, Satya Vart Punia (Mama of petitioner Manish Kumar) submitted that his nephew (Bhanja) was under treatment in Civil Hospital, Bhiwani and he has apprehension that his nephew has life threat and he may be kidnapped. It is pertinent to mention here that twenty four hours permanent Guard has been deployed in the Civil Hospital, Bhiwani and as per them, no application/complaint for life threat from official's respondents or from any other person has been received from petitioner or his relatives. As per the report of the then DSP, Siwani, the petitioner was discharged from the hospital on 27.08.2021. As per the statement of Inspector, CIA, Hansi, the petitioner Manish Kumar was made to Join investigation in case FIR No. 182 dated 07.08.2021, under Sections 147, 148, 149, 285, 365 IPC and Sections 25/54/59 of Arms Act, P.S. Baas, Hansi. As per him, the main accused has connection to him and thus he is filling false application/complaint to avoid his arrest.

3. That from the above facts and circumstances, prima facie there is no life threat to the petitioner at the hands of official's respondents and now the petitioner has been discharged from the Civil Hospital, Bhiwani on 27.08.2021 and not been residing Bhiwani thereafter. So, there is no cause to make further security. However, if any misdemeanour comes to the notice of the local police, legal action would be taken as per due procedure.

4. That in the representation dated 27.08.2021 (Annexure P. 11), the allegations were also made of custodial violence and extortion by the applicant Satya Vart Punia. In the enquiry of D.S.P. Siwani and S.P. Bhiwani, it was found that the allegations of custodial violence and extortion are of Hansi District, hence, the matter has been forwarded to the Superintendent of Police, Hansi for action on their part. The report of S. P. Bhiwani is annexed herewith as Annexure R-1.

7. In paragraph 4 of the Status report, the stand taken by the concerned DySP and Superintendent of Police that the allegations of causing custodial violence and extortion took place in Hansi District as such the matter was forwarded to the concerned Superintendent of Police Hansi as Annexure R-1.

8. A perusal of the status report and stand taken by the officials reveals that they are trying to shut their responsibilities by transferring the case like shuttle cock between two districts.

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9. Given above, respondent No.3 to look into the matter either himself or delegate the same to the other officer of IPS Cadre, who shall decide the complaints filed by the petitioner within three months from today by passing a speaking and reasoned order in accordance with law. The concerned Director General of Police, to ensure that after disposal of the complaints, either by himself or by some other officer, a copy of the said report/enquiry be communicated to the petitioner and one copy shall also be forwarded to his counsel for information. After the completion of the enquiry, in case the concerned DGP finds substance for action in the report, he/she may take appropriate steps in accordance with law.

10. Given above, the **Petition is partly allowed to the extent as mentioned above.** All pending applications, if any, stand disposed. Liberty reserved to seek redressal of all remaining pleas by taking appropriate legal remedies including to approach the State Human Rights Commission. Wherever there is limitation for any such legal remedy, to take such remedy, limitation is extended by 90 days from today.

11. Qua the transfer of investigation to CBI or any other police officials, given the aforesaid directions, such prayer would not be relevant at the present stage. However, in case the petitioner is remain aggrieved from the report communicate to him by the official respondent(s), he is permitted to file fresh petition in this Court in this regard as well.

(ANOOP CHITKARA)
JUDGE

Aug 10, 2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.