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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 8th May, 2023*+ **W.P. (C) 5905/2023 and CM APPL. 23091/2023-23094/2023****MALKIAT SINGH**

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Anuj Berry, Mr. Sanjeevi
Seshdari & Mr. Vibhore Yadav,
Adv. (M: 9811153629)

versus

UNION OF INDIA

..... Respondent

Through: Mr. Anurag Ahluwalia (CGSC) with
Mr. Kaushal Jeet Kait (GP), Mr. Jatin
Yadav (Adv).**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The Petitioner - Mr. Malkiat Singh, who is 80 years old, has approached this Court seeking setting aside of the extradition request dated 12th December, 2018.
3. The background of this case would show that the Petitioner, who was accused of murder, was arrested by the Punjab Police and was convicted on 28th August, 1976 by the Id. Addl. Sessions Judge, Ludhiana. The appeal arising out of the same was also dismissed on 19th April, 1979. Subsequently, the petitioner was granted bail by the Hon'ble Supreme Court of India on 15th December, 1980. However, the exact text of the order is not available. He was also issued a passport after obtaining police verification.

4. Thereafter, in 1984 the Petitioner shifted to the USA and started working as a 'Public Health Chemist' in the State of California. In 1995, the Petitioner's conviction was upheld by the Hon'ble Supreme Court and the Petitioner was directed to be taken in custody.

5. The Petitioner visited India in 1993, 1994 and 1996. His passport was renewed on 14th September, 2004 and thereafter, he again visited India in 2011. However, curiously the Petitioner was never arrested on his visits to India.

6. The impugned extradition request was made on 12th December, 2018 by the Minister of External Affairs to the USA and since then the Central Government has been pursuing the request. Meanwhile, in the USA, a criminal complaint was filed by the USA authorities and the Petitioner was arrested. Finally, he was granted bail in the USA on 2nd December, 2022.

7. The case of the Petitioner in the present petition is that the impugned extradition request dated 12th December, 2018 ought to be quashed in view of the severe medical condition of the Petitioner. He is stated to have suffered a severe stroke and has a heart condition.

8. It is submitted by Id. Senior Counsel on behalf of the Petitioner that in terms of the hospital records of the USA, ejection fraction of the Petitioner's heart is 10% and he is stated to have almost a non-functioning heart. Id. counsel for the Petitioner has also placed on record a photograph of the Petitioner. Reliance is also placed on Section 29 of the Extradition Act, 1962 which grants the Central Government the power to discharge any fugitive criminal.

9. Mr. Anurag Ahluwalia, Id. CGSC appearing for the Union of India submits that this is a clear case where the Petitioner is a fugitive from law.

He has misused the bail which was granted by the Hon'ble Supreme Court and has moved to the USA. It is submitted that the Petitioner was well aware of his conviction and could not have remained in the USA. Such a person is not entitled to any discretionary remedy being exercised in his favour.

10. Considering the overall facts of this case, there is no doubt that the Petitioner has travelled to the USA knowing full well of his conviction and the fact that he cannot remain in the USA. *Prima facie*, the Petitioner has failed to surrender after the conviction was upheld by the Hon'ble Supreme Court in ***Criminal Appeal No. 585 of 1979*** titled ***Labhu Ram and Ors. vs. State of Punjab*** a clear direction was issued by the Supreme Court to the following effect:

“11. After giving our anxious considerations to the facts and circumstances of the case and the submissions made by the learned Counsel appearing for the parties, it appears to us that in the instant case the depositions of Bhagwan Kaur PW 4 and two injured eye-witnesses, namely, PW 5 and PW 6 are wholly reliable. Such depositions do not suffer from any inconsistency. In our view, conviction can be based on the said depositions of the eye-witnesses. The case sought to be made out by the accused about the circumstances causing the death of Bhanan Singh is not only false but absolutely absurd. The nature of injuries sustained by the deceased also rules out the case of the defence that the deceased went to the house of the accused being drunk and attempted to go inside the house of the accused by scaling the wall while abusing the inmates and threatening to molest the daughters in the house of Labhu Ram, but suffered a fall from the wall of the house of the accused and died at the spot on receiving injuries on account of such fall from the wall. The wall is only five feet high and serious injuries suffered by the deceased could not have occurred by a fall from such small height. It is a pity that the wife of accused Labhu Ram was examined by the accused to give a false and absurd account

of the defence case.

12. In our view, the learned Counsel for the State is also justified in contending that the alibi of Malkiat Singh that he had been to the said police out post at 3 a.m. to lodge an information about the presence of some drunkards in Dashmesh Nagar Mohalla is absolutely false and should be discarded. It appears to us that after the commission of the crime alleged against him, Malkiat wanted to create an alibi and lodged a report at a later stage in the said police out post. It appears from the post-mortem examination that the deceased had been brutally assaulted by the accused thereby causing 19 injuries on his person. The evidences adduced by the eye-witnesses about the injuries caused to the deceased also tally with the post mortem report and deposition of the doctor. In our view, such injuries would not have been caused if the accused did not intend to kill him. There is also evidence that even when the deceased fell down after receiving injuries, he was not spared but the accused further assaulted him. Such conduct of the accused is only consistent with an intention to kill the deceased.

13. Therefore, no interference is called for in this case and the appeal is dismissed. It may be stated here that initially bail was granted by this Court to the deceased Labhu Ram and the appellant Malkiat Singh. Later on, the other appellants had also been granted bail by this Court. In view of the dismissal of their appeal, the appellants should be taken into custody forth with so as to serve out the sentences passed against them.”

11. Section 29 of the Extradition Act, 1962 reads as under:

“29. Power of Central Government to discharge any fugitive criminal.— If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act

to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.”

12. A perusal of Section 29 would show that the Central Government is empowered to give discharge for various reasons including:

- in the interest of justice;
- political reasons
- or otherwise; and
- if it is inexpedient to surrender or return the fugitive criminal.

13. The case of the Petitioner relating to his adverse medical condition is supported by the medical record. In light of the medical condition of the Petitioner, let the present petition be treated as a representation to the UOI. While deciding the representation, various factors including the physical requirements of the Petitioner for traveling from the USA to India, logistical constraints and whether he would be able to withstand the travel shall be borne in mind.

14. The Petitioner's medical condition and all the medical records which are placed with the writ petition, shall also be considered by the Union of India and a decision taken by the Union of India shall be communicated to the Petitioner through his counsel within three months.

15. This Court has not considered the matter on merits. All remedies of the Petitioner are left open.

16. The petition, along with all pending applications is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 8, 2023/dk/kt

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