

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-33351-2019

Date of decision: 18.04.2024

JAGMOHAN SINGHPetitioner

VERSUS

STATE OF PUNJAB AND OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Kanisth Ganeriwala, Advocate
for the petitioner.

Ms. Harpriya Khaneka, DAG. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for seeking issuance of directions to the respondents to award compensation of Rs.10 lacs for the illegal confinement of the petitioner for nearly 03 years in custody despite the suspension of sentence by this Court on 14.09.2016.
2. Learned counsel appearing on behalf of the petitioner contends that the petitioner had been arraigned as an accused in case FIR No. 152 dated 03.09.2011 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sultanwind, Amritsar. He was eventually convicted by the Special Court vide judgment dated 31.07.2013 passed in Session Case No. 119 of 31.07.2012. Aggrieved

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thereof, the petitioner filed CRA-S-1143-SB-2015 in the Punjab and Haryana High Court against the judgment dated 31.07.2013 wherein the petitioner was awarded a sentence of rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1 lac and to further undergo rigorous imprisonment for a period of one year in an event of default in payment of fine. It is contended that the petitioner being a poor person lacked adequate financial resources and had hence preferred the above appeal through the Legal Aid Services on 09.03.2015. An application under Section 389 Cr.P.C. for seeking suspension of sentence was also filed by the Legal Aid Counsel which was allowed by this Court on 14.09.2016. The petitioner was thus to be released on bail after his furnishing of bail bonds to the satisfaction of the CJM/Duty Magistrate, Amritsar.

3. He contends that even though certified copy of the order dated 14.09.2016 granting bail to the petitioner was already transmitted by the Registry of the High Court through the Superintendent (Criminal) for its due compliance on 16.09.2016 to the authorities namely the District and Sessions Judge, Amritsar, (the Successor Court of the trial Court); the Chief Judicial Magistrate; the Duty Magistrate as well as the Superintendent Central Jail, Amritsar, however, the petitioner was never informed by any of the aforesaid authorities about the decision of sentence having been suspended. It was only in the year 2019, when the petitioner came in contact with an Advocate and made an enquiry about his appeal that he came to know that sentence had already been suspended. The certified copy was thereafter applied for by the petitioner through Sh. Harpreet Singh Sidhu, Advocate which was delivered on 16.05.2019 and the petitioner was

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eventually released on bail on 17.07.2019 on furnishing requisite bail bonds. However, in the said process, the petitioner suffered incarceration for a period of nearly 03 years despite being entitled to be released from Jail. He submits that the petitioner had not been involved in any other case and does not have any other criminal antecedents. The authorities neither informed the petitioner nor his relatives about the order of suspension of sentence which was undisputedly received by them and for furnishing bail bonds due to which the petitioner remained in custody for the period to which he was not required to undergo. He thus prays for compensation be granted to him for such illegal incarceration in the present case.

4. Reply by way of a affidavit of Surinder Singh, Superintendent, Central Jail, Amritsar had been filed. Learned counsel appearing on behalf of the respondent-State referred to the said reply and contended that the petitioner had opted to file an appeal through the Legal Aid Services and that every convict or undertrial prisoner is apprised of the Court's order, when the same is received in the office and every prisoner has an opportunity to raise his grievance and for knowing the status of his case or appeal or bail application from free legal aid clinic established in Central Tower of Jail. She contends that members of the family are also allowed to meet an inmate and that the status of the bail application is duly conveyed to a prisoner and their family members by their counsel, or prisoners can ask about the status of their cases from Prison administration by raising a specific query or grievance or from their Counsel or family members by using telephone facility. Reference is also made to the submission that representatives/officials from the District Legal Services Authority also visit

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the Jail for regular inspection and for providing legal aid to the inmates and that the above issue of bail order having not been conveyed was never flagged by the petitioner at any point of time. She contends that no intimation with regard to suspension of sentence of the petitioner had been received in Central Jail, Amritsar by a registered post from the office of Registrar General (Criminal) or from the office of District & Sessions Judge, Amritsar and that the Central Jail, Amritsar was shifted from Airport Road, Amritsar to a new location at Jhabal Road, Fatahpur in the month of July, 2016 and the said shifting process ended in the month of August, 2016. Agreement was entered into with BSNL for providing Landline/EPBAX and Internet Services which commenced from 24.09.2016. In the intervening time period Internet Dongles were being used at Jail Control Room for receiving and sending any document. She contends that there was no record available with the office of Jail Superintendent for that period. An attempt was thus made to contend that there is no lapse on the part of the State. Reference was also made to the documents showing the dates and time when the relatives of the petitioner visited the jail premises.

5. On receipt of the said reply, information was also sought from the Registrar (Judicial) of this Court as regards the process followed by the High Court for sending of dockets, vide order dated 15.01.2024. The said order is extracted as under:-

“The controversy in the present case pertains to grant of compensation for illegal confinement of the petitioner for nearly 03 years and custody despite grant of bail to the petitioner vide order dated 14.09.2016.

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Vide order dated 29.11.2023, the State was called upon to file a detailed affidavit regarding the receipt of information of the orders of granting bail and the docket issued to the competent authority and the procedure which is required to be followed for ensuring that a person qua whom an order of bail has been passed is apprised of such an order and that he does not remained confined in custody despite bail having been granted solely on account of lack of information.

An affidavit of Anurag Kumar Azad, Superintendent, Central Jail, Amritsar has been filed on behalf of respondents No.2 and 3, in compliance thereto wherein it has been averred that the office of Superintendant Central Jail, Amritsar receives communication from other Departments/Offices/Courts on its official e-mail ID and through physical mode by registered post. In an ordinary course, when any letter is received, the same is mentioned in the concerned receipt register and all the letters are further marked to concerned officials of respective parties. It is also averred that in order to examine the said issue, a three member Committee has been constituted with a direction to submit its report whether the docket regarding the bail orders in CRA-S-1143-SB-2015 was received in the office of the Superintendent Central Jail, Amritsar or not. The report was submitted by the said Committee wherein it was reported that the receipt register and the record available reflected that no letter/docket related to suspension of sentence in CRM-26487-2016 in CRA-S-1143-SB-2015 was found to be received in the said registers. Reference is also made to the receipt register from 03.02.2016 to 26.09.2016 and from 27.09.2016 to 21.03.2017 for keeping records of the E-mail received in the office and it was reported that no letter/docket related to suspension of sentence was received thereunder as well. It is further pointed out that the Government official e-mail ID which is operational prior to December, 2022 and post December 2022 have also

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being checked, however, e-mails prior to the year 2022 are not available/accessible in the Inbox due to non-availability of data back up. There is thus a denial by the respondents regarding receipt of a docket about the grant of bail to the petitioner.

Before proceeding any further, it is deemed appropriate to seek a report from the Registrar Judicial as regards the procedure followed by the High Court for issuing docket and also to report whether the docket in the present case pertaining to grant of bail in CRM-26487-2016 in CRA-S-1143-SB-2015 was issued to the respondent-authorities or not.

To come up on 18.04.2024 for further consideration.

The Report/affidavit be also filed by the Registrar (Judicial), Punjab & Haryana High Court or or before the date fixed.

6. In compliance to the said order, a report has been furnished by the Registrar (Judicial) wherein it is informed as under:-

“On receipt of order dated 14.09.2016 in the Branch, the concerned dealing hand issued docket No.Criminal/99787/2016 dated 16.09.2016 (Flag 'A') to District & Sessions Judge, Amritsar, the Successor Court of Sh. Kuldeep Singh, JCS; CJM, Amritsar; Duty Magistrate, Amritsar, Superintendent, Central Jail, Amritsar and Advocate General, Punjab on their official e-mail ids. Official e-mail id of Superintendent, Central Jail, Amritsar at that time was sudhargharamritsar@gmail.com, which fact is also corroborated from the report dated 19.12.2023 (Flag 'B') submitted by the Committee of Deputy Superintendent (Factory), Assistant Superintendent and Junior Assistant, Central Jail, Amritsar. No revert message regarding 'email/message not delivered' was received after sending of e-docket.

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Vide Minutes of Meeting dated 15.10.2015 at Item No.4 of the Hon'ble Computer Committee (listing matters) (Flag 'C') the process of sending docket manually in criminal cases was dispensed with as e-docket in criminal cases had started functioning satisfactorily.

On clarification, the Central Copy Branch has informed that certified copies of order dated 14.09.2016 were applied vide Petition Nos. 1169623 dated 13.05.2019 and 1223581 dated 27.09.2019, which were issued on 16.05.2019 and 01.10.2019 respectively (Flag 'D').

A report was also sought from the District and Sessions Judge, Amritsar regarding receipt of e-docket dated 16.09.2016. In response thereto Sh. Lukesh Mahajan, LRC has informed that e-mail with Docket No.Criminal/99787/2016 was received on 16.09.2016 at 03:07 P.M. with subject CRM No.26487-2016 dated 14.09.2016 alongwith order dated 14.09.2016 passed in CRM No.26487 of 2016 and CRA-S No.1143-SB of 2015 in the official email id i.e. djasr@chd.nic.in (Flag 'E').”

7. It is thus clarified by the Registrar (Judicial) that post decision taken in the meeting held on 15.10.2015, the process of sending dockets manually in criminal cases had already been dispensed with and the e-docket facility has been started which was functioning satisfactorily,

8. It is thus clarified that not only had the docket been sent, the same had also been received by the respondents and that the same was never received back undelivered.

9. Counsel for the petitioner has argued that despite evidence establishing that order suspending sentence having been duly served, yet, the same was not informed to the petitioner. Due to the above default, the

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petitioner remained confined and under a belief that his sentence has not been suspended. The petitioner thus lost valuable crucial years of his life in custody when he could have been with his family. Prayer is thus made for compensation for such enhanced custody.

10. Counsel for the State, however, reiterated the facts as averred in the reply of the jail Superintendent and claimed that there was no lapse on its part. It even denied receipt of the order.

11. The said claim is, however, contradicted by the report filed by the High Court.

12. I have heard learned Counsel for the parties and have gone through the documents appended alongwith the present petition.

13. The prima issue is as to whether the petitioner is entitled to compensation for the prolonged detention due to non-communication of the order of suspension of sentence.

14. It is not in dispute that the e-mail Id i.e. Sudhargharamritsar@gmail.com was the e-mail Id that was being used by the office of the Superintendent Central Jail, Amritsar (however an attempt is made that the said E-mail Id was only for internal communication). The report also shows that the docket about the order of Suspension of sentence dated 14.09.2016 was duly sent on the said E-mail Id. It cannot be disbelieved at this juncture that the respondent did not receive the docket since all other bodies i.e. the office of District & Sessions Judge, Amritsar , the Successor Court of the trial Court, the Office of the Chief Judicial Magistrate as well as the Illaqa Magistrate have acknowledged receipt of the said docket. Further, the Registrar (Judicial) has also reported that the E-mail

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message was never received back as unserved and as such, there is a presumption that the same was duly delivered.

15. The explanation sought to be tendered by the respondent-authorities that they do not have a record pertaining to the E-mail on account of the shifting of the jail premises and being operated through Internet Dongle facility, is untenable. The service of the docket is not dependent upon the mode by which an internet facilities is availed. Hence, as and when the Internet services are resumed may be by a LAN/Dongle mode, all E-mails sent or received can always be assessed. Further, it is also not the case set up by the respondents that their system was ever hacked or had been corrupted with any electronic virus, as a result whereof the record may be stated to have been destroyed. The explanation thus being offered is nothing more than causing an excuse for failure. The attempt on the part of the officials is deprecated.

16. In the said background, it now needs to be seen whether the failure to convey order of bail would render the further detention illegal. Undisputedly when an order of bail is passed, it is intent of the Court that the person be released from custody. A prolonged legal detention despite bail certainly amount to violation of the rights. Timely communication and execution of bail orders has been emphasized much often by the Hon'ble Supreme Court of India. The question always is about fixing liability for administrative lapse as well as compensatory justice. The equitable jurisdiction thus necessitates striking a balance.

17. The present writ petition is disposed of with a direction to respondent-State to pay an interim compensation of Rs. 5,00,000/- to the

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petitioner as compensation for the period of prolonged, unnecessary and illegal detention over a period of three years despite suspension of sentence by this Court on 14.09.2016 and till its actual release.

18. The petitioner shall, however, be at liberty to also institute any other claim for seeking higher compensation, if so advised, by approaching the Civil Court.

19. Let the amount of the petitioner be released within a period of 02 months of receipt of certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 18, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No