



CRWP-1884-2025

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

CRWP-1884-2025

Date of Reserve : 11.03.2025

Date of Pronouncement : 21.03.2025

Gurmeet

... Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Karan Singh, Advocate for the petitioner.

Mr. Aditya Pal Singla, AAG, Haryana.

H.S. Grewal, J.

The instant petition filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of *habeas corpus* to release the petitioner-Gurmeet, who is allegedly been arrested by the respondents on 10.02.2025 and is in custody since then.

2. Learned counsel for the petitioner contended that the petitioner was illegally arrested by the respondents on 10.02.2025 which is in grave violation of Articles 21 and 22 of the Constitution of India and continued to be kept in unlawful custody since then at District Jail, Kaithal without following the procedure of Cr.P.C./BNSS. He further contended that in the order dated 11.02.2025 (Anneuxre P-4) passed by the learned Duty Magistrate, Kaithal, it had been admitted by the Investigating Officer that no notice under Section



41-A Cr.P.C./35(3) BNSS had been issued to the petitioner. It is also stated that the petitioner was illegally detained by the respondents much before registration of the FIR without complying the directions of Hon'ble the Supreme Court in the cases of **Prabir Purkayastha versus State (NCT of Delhi)**, 2024 INSC 414, **Vihaan Kumar versus The State of Haryana and another**, 2025 INSC 162 and **Arnesh Kumar versus State of Bihar and another**, 2014 SCC Online SC 532.

3. Learned counsel for the petitioner further contended that the petitioner was stated to be arrested in FIR No.41 dated 10.02.2025, registered under Sections 406/420 IPC and Section 7 of the Prevention of Corruption Act (added later on dated 13.02.2025), at Police Station Civil Line, Kaithal. The FIR has been registered by the complainant-Subhash Chand s/o Kundan Ram, who has stated that he had applied for the post of Peon in the year 2024 at District Court, Kaithal and one person, namely, Sumit, Superintendent asked for Rs.2,50,000/- for getting him appointed as Peon. It is also alleged that he gave the said amount of Rs.2,50,000/- to Sumit and Gurmeet(petitioner) at Kaithal Court after mortgaging his house. It is further alleged that the part payment was returned, however, the balance was not paid to him. The petitioner, being an employee working on the post of Peon at District Court Complex, Kaithal, Section 7 of the Prevention of Corruption Act was added later on. It has also been contended by the counsel for the petitioner that the petitioner was detained by the Investigating Officer on 10.02.2025 at about 03:00 pm while the FIR was registered by the police at about 09:57 pm and he



was produced before the Judicial Magistrate Ist Class, Kaithal on 11.02.2025 at about 04:00 pm wherein his remand was sought.

4. In response to notice of motion, learned State counsel has filed reply dated 04.03.2025 by way of an affidavit of Deputy Superintendent of Police (HQ), Kaithal on behalf of the respondents/State in Court which is taken on record. He, while referring to the reply, has submitted that the petitioner was arrested on 10.02.2025 at about 10:09 pm and the information in this regard was given to the real brother of the petitioner, namely, Pawan son of Thandia Ram. It is also stated that the petitioner was never arrested at 03:00 pm and was never illegally detained by the police. Moreover, he was joined into an enquiry to ascertain the facts of the case before registration of the FIR.

5. I have heard the learned counsel for the parties and have carefully perused the record of the instant case.

6. The police has the power to preliminary investigate the matter/complaint where a cognizable offence is made out, to ascertain the veracity of such information before registration of the FIR. Hon'ble The Supreme Court in the case of **Lalita Kumari vs Govt. of U.P. & Ors, AIR 2014 SC 187** had specifically mentioned the nature of cases where preliminary enquiry can be made. The relevant extract of the judgment is reproduced hereunder:-

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

XXXXXXXXXXXXXX



The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) **Corruption cases**
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.”

7. The plea taken by the counsel for the petitioner with regard to non-compliance of the relevant provisions of Cr.P.C./BNSS is not made out.

Section 41 of Cr.P.C. (Section 35 of BNSS) provides as under:-

“41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) the police has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or



(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured and the police officer shall record while making such arrest, his reason in writing;

[Provided that a police officer shall, in all the cases where the arrest of a person is not required under the provision of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognisable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

xxxxxxxxx”

8. The petitioner, who had been specifically named in the complaint preferred by one Subhash Chand s/o Kundan Ram where a cognizable offence has been made out and had been called upon to join preliminary enquiry to ascertain the veracity of such information, cannot be said to be in an illegal confinement, on account of non-issuance of notice under Section 41A Cr.P.C. It would neither amount to nullify his arrest nor would amount to breach/violation of his rights under Articles 21 & 22 of the Constitution of India.

9. Furthermore, the case of the petitioner is not covered by the judgments cited by the counsel for the petitioner passed by Hon’ble the Supreme Court in the cases of **Prabir Purkayastha versus State (NCT of**



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Delhi) (supra), Vihaan Kumar versus The State of Haryana and another(supra) and Arnesh Kumar versus State of Bihar and another(supra) as the petitioner was not arrested at the time of preliminary enquiry. He was being simply joined in an enquiry and thereafter, upon registration of FIR, he was arrested and his real brother, namely, Pawan s/o Thandia Ram was duly informed. He was later produced before the trial Court as per the law for further remand. Since the petitioner has been named in the FIR and his family duly informed, therefore, there is no violation of his rights under Articles 21 & 22 of the Constitution of India and his arrest could not have been stated to be illegal.

10. In view of the aforementioned facts and circumstances of the case, this Court does not find any merit in this *habeas corpus* petition and the same stands dismissed.

(H.S.GREWAL)
JUDGE

21.03.2025
A.Kaundal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No