

(1994) 06 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 337 of 1994

Daljit Singh Rajput

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: June 17, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 34, 364

Citation: (1994) CriLJ 3344 : (1995) 1 RCR(Criminal) 493

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: H.S. Hooda, P.S. Hundal, D.S. Rajput, B.S. Bhasaur, S.S. Joshi and Ram Sarup, for the Appellant; Ashok Aggarwal, A.A.G., M.J.S. Sethi and Amti Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.K. Bali, J.

Shri Daljit Singh Rajput an Advocate of this Court in this public litigation through a writ petition filed by him under Article 226 of the Constitution of India has focused the attention of the court on a recent but fourth case of a similar nature of disappearance of a Lawyer stated to be engaged in defending perosns allegedly involved in terrorists activities in the estimate of Punjab police, praying either production of the missing Advocate in the Court and if the respondent-police officers are unable to produce the Advocate to order investigation in the matter by the Central Bureau of Investigation.

2. It is the news item that appeared in "Daily Ajit" stated to be circulating at National and Inter-National level on 14th May, 1994 with caption "STRIKE DUE TO KIDNAPPING OF ADVOCATE" which evoked considerable interest. The petitioner with a view to find out the truth through an independent investigating agency filed the petition in the nature of habeas corpus on the very date when the news item appeared i.e. May 14, 1994, the same being holiday was presented at my residence after getting it cleared from the office. It is mainly pleaded that the facts mentioned in the news item led the petitioner to have strong apprehension that the District Police officials of Sangrur at the instance of Senior Superintendent of Police, Sangrur had kidnaped Sukhwinder Singh-Bhatti Advocate in civil dress. The news item reads thus:-

Lawyers are protesting due to the kidnapping of famous Lawyer of District. Courts, Sangrur Sh. Sukhwinder Singh Bhatti. Today District Court Advocates have gone on strike and Distt. Bar Association gave call for srike to all the Advocates of Punjab till 16th May.

Yesterday at about 5 PM above said Sukhwinder Singh Bhatti was travelling in bus for going to his village "Badbar" some unidentified armed persons in car stopped that bus near Bahadarpur and abducted him.

3. The petitioner pleads that the apprehension of involvement of respondent police officers was for the basic fact that the missing Advocate was pleading the cases of persons who were detained for high security jail, Sangrur and was also defence Counsel in famous Longowal murder case. The petitioner, as referred to above, seeks production of the Advocate or in alternative enquiry by some independent agency as according to him the police officers are not likely to take any action in the matter as those who abducted Mr. Bhatti were their subordinates and the respondent police officers, therefore, were not likely to move against them.

4. Notice in this case was given to the respondents returnable on 16th May, 1994. However, since the Counsel appearing for the petitioner orally prayed for arraying Superintendent of Police, Barnala as a party in the matter, the case was adjourned to 18th May, 1994, with a direction to the respondents to file their replies to the petition. No reply was filed on the adjourned date but on the request of Mr. Ashok Kumar Aggarwal, Additional Advocate General, Punjab the matter was adjourned to 23rd May, 1994. It requires to be mentioned here that Mr. Aggarwal sought short adjournment in the matter on the plea that even though the written statement was ready, yet the details of the search made by the police with a view to find out whereabouts of Mr. Bhatti required to be detailed in the written statement. On the adjourned date i.e. 23rd May, 1994, affidavits of Jasminder Singh, S.S.P. Sangrur and Jagdish Kumar, SSP, Barnala were placed on record and the matter was adjourned to 24-5-1994 for arguments on the request of the Counsel for the parties. On 24th May, 1994, the matter was adjourned to 26th May, 1994. The matter, however, did not come for hearing on 26th May 1994, but instead was taken up on 27th May,

1994. Mr. Aggarwal, Additional Advocate General, Punjab during arguments sought some more time as according to his instructions there were chances of the missing Advocate to be traced and produced in the Court. It was stated by the Counsel on the instructions given to him that all out efforts are being made to know about the whereabouts of Mr. Bhatti. Keeping in view of the facts of the case, the matter was adjourned to 2nd of June, 1994. The police could not find any clue with regard to whereabouts of Mr. Bhatti and on 2nd June, 1994, the arguments were concluded and the judgment was reserved. It was recorded in the interim order dated 2nd June, 1994 that the judgment is likely to be pronounced during vacations and if there is some proof about the whereabouts of Mr. Sukhwinder Singh Bhatti Advocate, the information be given to the Court but till date, the respondents have not apprised this Court with any information whatsoever leaving the Court with no option but to conclude that the respondents have not been able to proceed any further in tracing Mr. Bhatti.

5. In reply respondent No. 2 by way of an affidavit pleads that petitioner has failed to produce on record any circumstances giving him apprehension that persons who are alleged to have kidnapped Mr. Sukhwinder Singh Bhatti Advocate were police officials from Police District Sangrur while they were in civil dresses. It is, however, admitted that it is the duty of respondents to trace Mr. Bhatti Advocate and in that respect all out efforts are being made. It is further stated that Punjab Police has never been against Mr. Bhatti for any reason including that he has been pleading the cases of persons detained in high security jail, Sangrur. Entire record of Police District Sangrur does not contain anything against Mr. Bhatti in this regard. In paragraph 8 of the affidavit it is stated that police is making all out efforts to trace Mr. Bhatti, Advocate and it would be able to trace him within shortest possible time and that the Lawyer fraternity would not observe strike. Jagdish Kumar, Senior Superintendent of Police, Barnala, respondent No. 3 has also filed affidavit stating therein that queries to all the S.S.Ps. including the S.S.P. Sangrur have been sent and information from various Districts has been received that Mr. Sukhwinder Singh Bhatti is not in their custody. On 15th May, 1994, at about 12.00 p.m. a T.P.M. No. 1157/CR was sent to all the S.S. Ps. in Punjab and they were requested that in case Mr. Sukhwinder Singh Bhatti had been rounded up by any police party, the information should be sent to the S.S.P. Barnala. On 16th May, 1994, negative reports were received from Mansa, Khanna, Jagraon, Gurdaspur Batala and Fatehgarh Sahib, Patiala, Sangrur and Kapurthala. On 16th May, 1994 negative reports were also received from Ropar, Ludhiana and Jalandhar. To the same effect were the reports received from Majitham, Tarn Taran, Bathinda, Faridkot and Ferozepur on 16th May, 1994, and a reward of Rs. 1,00,000/- for giving information which may lead to the recovery of Mr. Bhatti was also announced. The photograph of Mr. Bhatti had also been published in the leading newspapers for identification purposes. Dalip Singh S.P.(D) had also made enquiries from police of Police Stations Sherpur, Dhuri, Amargarh and Malerkotla. On 17-5-1994 but no clue could be found.

On 19-5-1994, he made enquiries from Police Station City Nabha, Sadar Nabha, Bhawanigarh, Kotwali Sangrur and Sadar Sangrur but again he could not get any information about the whereabouts of Mr. Bhatti. Now, the investigation has been handed over to Rajinder Singh, I.P.S., AIG Ops./IVC Punjab, It is further stated in the affidavit that apprehension and suppositions of the petitioner have no base. However, on the basis of statement made by Shri Harbans Singh, mother's brothers' son of Shri Sukhwinder Singh Bhatti, a case has been registered vide F.I.R. No. 29. dated 15-5-1994 under Sections 364/34, Indian Penal Code as also under the Arms Act in Police Station, Dhanaula which was investigated by S.P.(D) Shri Dalip Singh and now Shri Rajinder Singh IPS, AIG Ops./ IVC Punjab is investigating the case. In the end it is also stated that wireless messages had been flashed through out the State of all the Senior Superintendents of Police to inform the Investigating Officer in case Shri Sukhwinder Singh Bhatti was detained by any police party in any case any where and as the investigation will be conducted fairly, so there is no need to handover the investigation of the case to C.B.I. Affidavit sworn by Rajinder Singh on 26th May, 1994, has also been placed on record wherein it is mentioned that on instructions of Director General of Police, Punjab, Inspector General of Police, Operations & Internal Vigilance Cell, Punjab, Shri G. I. S. Bhullar, I.P.S. had personally visited the spot on 16th May, 1994 and he heard family members and relations of Mr. Bhatti, important lawyers led by Mr. Ram Sarup Advocate, President District Bar Association Sangrur and others and, in fact, he instructed the concerned police officials suitably. The investigation of the case has been handed over to the investigation team headed by him and the said team camped at Sangrur and examined witnesses u/s 161, Criminal Procedure Code. In all 11 witnesses were examined including complainant in the F.I.R., wife of Mr. Bhatti and co-passengers in the bus in which Mr. Bhatti was reportedly kidnapped, President of the Bar Association, Sangrur and other notables. Systematically all Senior Superintendents of Police were enquired whether any police party had taken Mr. Bhatti in police custody. It was particularly emphasised that all S.S. Ps should hold special meeting with the field police officers in their respective District to personally enquire about the whereabouts of Mr. Bhatti and send a reply in writing. Besides, Rajinder Singh IPS had himself talked to all the Senior Superintendents of Police on telephone to make discreet enquiries. All the S.S. Ps have reported that no such police party had taken Mr. Bhatti in custody. All S.S.Ps were instructed to alert their secret sources to find out clue about Mr. Bhatti and due publicity through newspapers and television was organised. A cash reward of Rs. 1,00,000/- to get any clue about Mr. Bhatti was also announced. Suspected hide outs of terrorists in different parts of the State had also been raised "and kept under surveillance. The secret sources at the disposal of all the filed officials had also been alerted to find out Mr. Bhatti. The deponent personally met District and Sessions Judge Sangrur to exchange notes about the kidnapping of Mr. Bhatti. On 20th May, 1994, he had met the Deputy Commissioner, Sangrur to note any particular aspect which requires verification. He also heard the analysis by local intelligence officers Shri Tarsem Singh D.S.P. and briefed him to

bring about anything of interest to his notice. Further effective monitoring of all the efforts was also organised and the deponent was in constant touch with the field officers especially with the field officers of Districts Sangrur and Barnala and were taking progress report on day to day basis. Shri G. I. S. Bhullar, I.P.S. Inspector General of Police, Operation & Internal Vigilance Cell was also informed about the progress in the case and a detailed report was submitted to D.G.P. Punjab. It was further stated that the police in all the neighbouring State of Himachal Pradesh, Haryana, Rajasthan and Jammu & Kashmir had also been requested to alert their agencies in connection with the kidnapping of Mr. Bhatti and report matter of interest. The International Air Ports of India had been informed about the particulars and description of Mr. Bhatti so that any such person leaving India may come to the notice of the deponent. The said request was also endorsed to National Crime Records Bureau, which is co-ordination agency at the National Level for taking appropriate action in the matter.

6. On 24-5-1993, petitioner filed Criminal Misc. No. 63 of 1994 praying therein that Senior Superintendent of Police, Sangrur and Superintendent of Police Barnala, respondents Nos. 2 and 3 should be placed under suspension and transferred so as to facilitate impartial investigation by the C.B.I, with a view to strengthen the plea and prayer for suspension and transfer, it is stated that affidavits of respondents Nos. 2 and 3 reveal that police had made no serious efforts to trace Mr. Bhatti and they had rather indulged in paper transaction only like flashing of wireless message. Abduction of Mr. Bhatti is not the first case and is rather the fourth one in the last three years. In the first instant, Ranbir Singh Mansahia, Advocate was taken away by the police three years ago and his whereabouts were still not known. Thereafter, Mr. Jogwinder Singh Advocate was kidnapped by Kapurthala police in similar circumstances about two years ago and his whereabouts are not known till date. Then came the turn of Kulwant Singh Advocate who alongwith his wife and 1 1/2 year old son was brutally murdered by the Ropar police and their dead bodies were thrown in canal along with car and still nothing had come out of the investigation even though the Supreme Court has, ordered C.B.I. investigation to be completed within three months. The abduction of Mr. Bhatti is stated to be the fourth similar case where lawyer defending persons involved in terrorists activities had been kidnapped and done away with. It is further pleaded that even though it has been asserted by respondents Nos. 2 and 3 that there was nothing against Mr. Bhatti with either of the Police Districts of Sangrur or Barnala but still the police was not doing anything which indicated that the police was not only inefficient but was also swallowing the Advocate one by one. As a matter of fact, this modus operandi of police to liquidate Advocates is direct interference with the administration of justice.

7. A reply to this application was filed by Rajinder Singh, IPS, AIG(OP) and IVC, Punjab, Chandigarh who has been entrusted with the investigation of the case. It is said therein that the police officers had always been co-operating in the discharge of their duties and there was nothing against Mr. Bhatti in the police records. The

allegations made in the criminal miscellaneous application are said to be false and based upon conjectures and that the petitioner had failed to bring anything on record to make his plea looking .prima facie probable. Serious efforts were being made to trace out Mr. Bhatti and keeping in view the fact that he is seized of the matter, nothing was left to a chance.

8. It requires to be mentioned that on 24th May, 1994, Mr. Mohinder Jit Singh Sethi, Senior Advocate appeared on behalf of Human Rights Commission and he requested to intervene in the matter which permission was granted. He was also allowed to bring on record any material that may be relevant to the controversy in issue. No material was brought on record by the learned counsel. However, Mr. Sethi joins the petitioner in demanding enquiry culminating into kidnapping of Mr. Bhatti by the C.B.I, by contending that the apprehension of the petitioner and lawyer fraternity is based upon cogent grounds and if that be so, carrying on with the police investigation would be only an empty formality and mere eye wash.

9. This Court after hearing the learned counsel appearing for the parties and going through the record of the case is of the considered view that even though for the time being there may be no case for suspending and transferring Superintendents of Police of Sangrur and Barnala, respondents Nos. 2 and 3, yet there is ample justification in the facts and circumstances of the case to order enquiry leading to abduction of Mr. Sukhwinder Singh Bhatti, Advocate and to locate his whereabouts by an independent agency i.e. C.B.I. It is not denied that it is the fourth case of the kind where a practising lawyer about whom it is not denied that he was defending persons alleged to have been involved in terrorists activities had been missing and there is no clue of him even though the police had made thorough investigation details whereof have been given while dealing with the replies filed by the respondents in this case. First in the point of time, Mr. Ranbir Singh Mansahia, an Advocate of Bathinda, who was engaged to defend persons involved in terrorists activities was kidnapped about three years ago and his whereabouts are not known till date. Thereafter, on Jogwinder Singh an Advocate of Kapurthala was kidnapped under similar circumstances who too, it is the case of the petitioner and not denied in the replies filed, was defending similar persons. In the recent past, Kulwant Singh Advocate of Ropar who too was defending persons involved in terrorists activities along with his wife and 1 1/2 years old son was picked up and dead bodies of all of them were found in a canal. It is rather interesting to note that even though in the matter of Kulwant Singh and his family the police had submitted a challan but inasmuch as apprehension of lawyer fraternity was that the real accused were being shielded and putting up of challan was only a measure to hush up the matter and therefore their plea that an enquiry should be made by an independent agency like C.B.I. prevailed with Apex Court. In [Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others](#), . The aforesaid plea, however, had failed in the case before this Court but while dealing with the matter in the SLP which was filed against the decision of this Court, the Supreme

Court observed, that investigation having been completed by the police and charge-sheet submitted to the Court, it is not for Supreme Court, ordinarily to re-open the investigation but nevertheless, in the facts and circumstances of the instant case to do complete justice in the matter and to instill confidence in the public mind, it was necessary to have a fresh investigation in this case through specialised agency like the Central Bureau of Investigation, C.B.I, was directed to take up the investigation in the case. It was further observed that, "High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the region." It was also observed that the High Court had failed to perform the duty entrusted to it under the Constitution.

10. It is by now well settled by series of judgments given by Supreme Court that an enquiry can be directed by appropriate agency for preservation and protection of fundamental rights. There is no need to detail all judgment of the Supreme Court in the matter. Suffice it to mention some of these cases reported in [Bandhua Mukti Morcha Vs. Union of India \(UOI\) and Others](#) ; [Mukesh Advani Vs. State of M.P.](#), and [Sheela Barse \(II\) and Others Vs. Union of India \(UOI\) and Others](#), which show that High Court should make enquiry directly but where in a case the High Court finds it difficult to make inquiry or investigation directly as it is difficult to take evidence without which the question in dispute cannot satisfactorily be decided, the party approaching the High Court for enforcement of fundamental rights is not in a position to furnish all the relevant materials and necessary particulars. Therefore, to appoint a Commission or to direct inquiry for finding out materials through an appropriate agency, is an, alternative method of course. It is necessarily on the satisfaction of the Court as to the correctness or otherwise of the allegations which are in violation of fundamental rights to enable the Court to decide the question in dispute. Mere apprehensions which have no foundation are, of course, not enough to order investigation or inquiry by the High Court. Further, as is held in [Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others](#), , the inquiry and investigation can also be ordered with a view to instill confidence in the mind of general public.

11. There may be some cases where persons approaching the Court might be in a position to place on record some evidence prima facie or conclusively showing the involvement of the person or persons against whom inquiry/investigation is sought to be ordered but in the very nature of things, such cases would be very few. In most of the cases it would be apprehension but if apprehensions are based on whims and fancies and it is not known to the satisfaction of the Court that no proper investigation is being made by those who are entrusted with the same, obviously no case to order enquiry by specialised agency shall be made out. However, if apprehensions have a clear base and the crime is such which has evoked public interest, in considered view of this Court inquiry or investigation can be and should be ordered through a specialised agency. As mentioned above, it is not the first case of the lawyer disappearing in the State of Punjab in mysterious circumstances. The

police could not trace out any but for Mr. Kulwant Singh whose dead body along with the dead bodies of his wife and child was found in a canal. It may be a coincidence that all the four lawyers were defending persons involved in the terrorists activities but this fact in itself is enough to create an impression of the kind that the petitioner and lawyer fraternity had entertained in the present case. It is for this reason that it cannot be said that the view of lawyer fraternity which, of course, does not go beyond the realm of apprehension is ill founded or is not based on cogent grounds. That a part, in a case of this kind, it cannot be even remotely urged by the respondents that Courts should not order investigation by specialised agency and if the police is not involved in the matter as is obviously its case, there should be an all out effort by all concerned to find out the truth.

12. It is more than 40 days that Mr. Bhatti was abducted. Investigation done by the police has brought no tangible results. The Additional Advocate General, Punjab, appearing for the State of Punjab has repeatedly informed the Court on the basis of instructions given to him that Mr. Bhatti is likely to be traced. He sought for time in the matter but on adjourned date came up with no information whatsoever which might show any substantial progress in the matter. On the date when the arguments concluded, he was told to inform the Court before the judgment was pronounced, if there was any clue with regard to whereabouts of Mr. Bhatti but, as mentioned above, no information has been received by the Court in this regard. It, thus, may be a case of the respondents that police officers are not involved in the matter but it is definitely a case where they have at least failed to trace Mr. Bhatti or to have even a scant clue with regard to his even being dead or alive That coupled with the apprehension entertained by the petitioner and lawyer fraternity as also instill faith and confidence in the people, the present case calls for ordering investigation by specialised agency i.e. Central Bureau of Investigation. As mentioned above, no case is made out atleast presently to order suspension or transfer of respondents Nos. 2 and 3 as nothing has been brought on record which may show their involvement in the matter or that they are putting obstacles in the way of investigation. As and when some material is brought on record, it shall be open to the petitioner or any one concerned in the matter to bring to the notice of the court and ask for the appropriate orders. Even the C.B.I, entrusted with the matter it might face some difficulties in that regard, can well bring it to the notice of the Court for issuing appropriate directions.

13. The petitioner has also prayed for compensation to be given to the family of Mr. Sukhwinder Singh Bhatti but that request in the very nature of things is premature and cannot be entertained at this stage.

14. For the reasons recorded above, this petition is allowed and it is ordered that abduction of Mr. Sukhwinder Singh Bhatti, Advocate, who reportedly was picked up on May 13, 1994 near Bahadurpur should be enquired and investigated by Central Bureau of Investigation and that too by an officer of the rank of S.P. To be precise

S.P., Central Bureau of Investigation, Chandigarh, would be the officer who shall enquire and investigate the matter. It is further ordered that he shall be assisted in the matter by the Punjab Police, if he so requires. He would proceed in the matter immediately and conclude the inquiry/investigation as expeditiously as possible and submit his report within three months from today. A copy of this order be sent to S.P., Central Bureau of Investigation, Chandigarh forthwith.