

(2003) 07 P&H CK 0068

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 326 of 2003

Chander Kanta

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision: July 15, 2003

Citation: (2005) 1 RCR(Criminal) 734

Hon'ble Judges: Nirmal Singh, J

Advocate: Mr. Om Pal Sharma, Advocate.Mr. U.S. Dhaliwal, D.A.G., Punjab Mr. Yogesh Goel, Advocate., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This is a petition under Sections 226/227 of the Constitution of India for the issuance of writ in the nature of Habeas Corpus directing respondent No. 2 to produce the detenu Yash Pal who has been illegally detained by him.

23. The petition came up for hearing on 9.4.2003. This court appointed Shri S.C. Malik as Warrant Officer. He has submitted report dated 10.4.2003. The relevant part of the report reads as under :

"Reached Police Station Sidhwan Bet at 9.45 and after disclosing my identity and the purpose of visit to the MHC, took into possession the Roznamcha and initialled at the end of last entry bearing No. 30 and thereafter made an entry at 31.

Then in the company of petitioner and the abovesaid Shiv Charan Thakur searched the premises of the police station. However, in the mess, in the precinct of police station, found the alleged detenu namely Yash Pal preparing chapatis along with other police personnels.

On receiving message about the raid, the incharge of the police station, namely SI Jaswinder Singh reached there and disclosed that a written complaint was received regarding attempt to commit theft against four persons (the alleged detenu not named in the said complaint), photocopy attached herewith for reference, and in

that connection the detenu was called in the Police Station for interrogation. Thereafter the warrants were served upon the Incharge of the Police Station and after making an entry at Sr. No. 32 at 10.25 P.M. left the Police Station accompanying the petitioner and the alleged detenu."

4. From the report of the Warrant Officer, it is clear that Yash Pal was illegally detained in the Police Station and he was preparing chapatis in the mess.

5. On notice, respondent No. 2 i.e. Jasbinder Singh, SHO P.S. Sidhwan Bet filed reply and denied that Yash Pal was illegally detained. However, it was pleaded that Yash Pal was called in the Police Station for enquiry in the theft case on the written complaint but instead of coming to the Police Station he went to the mess which is situated outside the premises of the Police Station and started preparing the chapatis at its own level. Thereafter a raid was conducted by the Warrant Officer who found the alleged detenu in the mess and took him along with him. Thereafter, the Warrant Officer made the entry in the Rapat Roznamcha.

6. I have heard learned counsel for the parties and perused the record.

7. The reply filed by SHO Jasbir Singh is not satisfactory. The plea of respondent No. 2 is that Yash Pal was called in the Police Station for enquiry in some theft case on the written complaint. The written complaint was perused by the Warrant Officer. In the said complaint, names of four persons were mentioned but name of Yash Pal has not been mentioned by the complainant. So the plea taken by SHO Jasbir Singh is untrue.

8. The respondent has illegally detained the detenu for which not only the detenu but his other family members have also suffered mental agony.

9. Petitioner is the wife of Yash Pal detenu. She has approached this court for the release of her husband. She has suffered both mentally and financially.

10. Where a party suffers mentally and financially at the hands of the respondents, they have to pay exemplary costs. In Sebastian M. Hongry v. Union of India, AIR 1984, SC 1026, the Apex Court has held as under :

"Now in the fact and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mr. C. Thingkhula, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M. Hongry, we direct that as a measure of exemplary costs as is permissible in such cases, respondent Nos. 1 and 2 shall pay Rs. 1 lac to each of the aforementioned two women within a period of four weeks from today."

11. In similar circumstances, this Court in Criminal Writ Petition No. 844 of 2001 (Surinder Kaur v. Manjit Singh and another) decided on 28.3.2003 has directed the

respondents to pay compensation to the detenu.

12. In view of the above, it is directed that respondent No. 2 is liable to pay compensation to detenu Yash Pal of Rs. 2,500/-. The State will pay on behalf of respondent No. 2 and the State can recover the said amount from the salary of respondent No. 2.

13. The Senior Superintendent of Police, Ludhiana is also directed to take disciplinary action against SHO Jasbinder Singh as per law.

14. Copy of this order be given to counsel for the parties on payment of usual charges.