

(2006) 11 P&H CK 0125

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ Petition No. 516 of 2006

Sukhpal Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Nov. 1, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 447

Citation: (2007) 1 RCR(Criminal) 398

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: R.S. Bains, for the Appellant; R.K. Nihalsinghwala, D.A.G., Punjab For the Respondent No. 3 Mr. A.S. Jattana, for the Respondent

Judgement

T.P.S. Mann, J.

The present petition was filed by the petitioner for issuance of a writ of habeas corpus for securing the release of Gurdev Singh, Baljinder Singh and Pappu from the illegal custody of respondent No. 3 in Police Station Dyalpura Bhai Ka.

2. It was averred in the petition that Gurdev Singh and Baljinder Singh, father and brother respectively of the petitioner and their employee Pappu were taken into illegal custody by respondent No. 3 on 3.6.2006 around 12.00 noon from the fields situated in village Dyalpura Bhai Ka. Thereafter they were taken to Police Station and beaten mercilessly. The respectables of the village went to the Police Station and saw that Gurdev Singh, who was aged 72 years, was beaten very badly and was in a bad condition. No medical aid had been given to him. Claiming that neither any FIR was registered against any of the three detenus nor they were produced before the magistrate within 24 hours, the present petition was filed by the petitioner seeking the release of the three detenus from the illegal custody of respondent No. 3 forthwith.

3. When the petition came up for motion hearing, notice was issued to respondent Nos. 2 and 3 as also to Advocate General, Punjab and a Warrant Officer was directed to be appointed for effecting the search of the three detenus in Police Station Dyalpura Bhai Ka or any other place as might be pointed out by the petitioner.

4. The Warrant Officer, while in the company of the petitioner reached Police Station Dyalpura Bhai Ka on 4.6.2006 at 8.00 p.m., disclosed his identity to the Sentry posted there and requested him to close the main gate and not to allow anybody to come in or go out till the search was over. Another police official also reached there immediately, who disclosed his name as Sat Pal and his being posted as AMHC. The Warrant Officer requested said AMHC to provide him the Roznamcha, but he did not stop and left the Police Station. At that point of time, the petitioner pointed out towards some persons present in the barrack of the Police Station. The Warrant Officer went there and found that some persons were sitting on the cots placed in the said barrack located just adjacent to the lock-up room. They disclosed their identities as Gurdev Singh, Baljinder Singh and Pappu Kumar, the three detenus. The Warrant Officer then, in the company of the Sentry, went to the room of MHC but the Roznamcha was not found available there. On being asked by the Warrant Officer to inform the SHO, who was stated to have gone for patrolling, the Sentry took the Warrant Officer to the room of Wireless Operator, which was located in the same premises. An effort was made by the Wireless Operator to contact the SHO but he failed. The Warrant Officer then requested the Wireless Operator to inform Superintendent of Police (Headquarters) or the Senior Superintendent of Police, Bathinda but he showed his inability. Effort was made by the Warrant Officer to contact the aforementioned two officers on phone but they could not be contracted. Sometime later, SI Sarbjit Singh, SHO of Police Station, respondent No. 3 along with MHC Partap Singh reached there and were apprised by the Warrant Officer of the situation. At that point of time, AMHC Sat Pal also reached there and produced the Roznamcha while they were present outside the main gate. The Warrant Officer put his initials at Sr. No. 18, which was below last entry at Sr. No. 17. The Warrant Officer enquired from the SHO about the presence of three detenus. The SHO told him that FIR No. 60 dated 3.6.2006 u/s 447/506/34 IPC had been registered at Police Station Dyalpura against them and they have been arrested vide DDR No. 14 mentioned in the Roznamcha dated 4.6.2006 at 3.00 p.m. Both the FIR and DDR No. 14 were shown to the Warrant Officer. The Warrant Officer became apprehensive as the Roznamcha was not produced before him by the AMHC about an hour earlier. He requested the SHO to show him the case file/arrest/jamatalshi memo etc., which he expected to have been prepared by the police officer while arresting an accused but no such document was shown to him. He was, however, told that the relevant file was with one ASI Gurjant Singh, who was the investigating officer of the case and at that point of time was not present in the Police Station but on patrol duty in the Ilqa. The Warrant Officer requested for calling the investigating officer and in spite of the message being conveyed to him, as told by the SHO, he did not reach there

even after the Warrant Officer waited for a sufficient period of time i.e. more than one hour. During this time, the Warrant Officer recorded the statement of the SHO, besides a joint statement of all the three detenus in which they all stated that they were brought from their fields at 10.00 a.m. on 3.6.2006 to the Police Station and after being put in the lock-up, were given beatings. After completing other formalities, the Warrant Officer made entry in the Roznamcha at Sr. No. 19 at 9.50 p.m. and left the Police Station. However, in view of the FIR, as well as the entry regarding the arrest in respect of all the three detenus, they could not be released.

5. Reply has been filed by respondent No. 3, wherein it has been denied that the three detenus were illegally confined at any time. Further that FIR No. 60 dated 3.6.2006 under Sections 447/506/34 IPC was registered against them at Police Station Dyalpura on the basis of a written complaint of one Baljinder Kaur, wherein she had claimed that the three detenus forcibly and unauthorisedly entered her land on tractor along with tiller and thereafter cultivated the same. When she asked them not to do so, they threatened her with dire consequences. Further that the three detenus were arrested on 4.6.2006 at 3.00 p.m. by the police of Police Station Dyalpura vide DDR No. 14 dated 4.6.2006. As the offences were bailable, they were asked to furnish their bail bonds and produce sureties but they failed to do so. They were, thus, confined in the lock-up of the Police Station and were, accordingly, found confined by the Warrant Officer when he visited the Police Station. In para 2 of the preliminary submissions, it has also been pleaded by respondent No. 3 that the three detenus were habitual offenders, who had constituted a gang of land grabbers and seven different FIRs were registered against them, six of them at Police Station Dyalpura, while 7th at Police Station Phul. Prayer was made for dismissing the present petition.

6. I have heard the counsel for the parties and perused the records including the Rosnamcha maintained in Police Station, Dyalpura.

7. Admitted facts of the case are that the three detenus were found confined in Police Station Dyalpura on 4.6.2006 at about 8.00 p.m. when a Warrant Officer appointed by this Court visited the said place. Whether they were confined in the barrack/room or the lock-up is immaterial, as all these places were located in the Police Station itself. The police on the one hand claims that three detenus were accused in FIR No. 60 dated 3.6.2006 under Sections 447/506/37 IPC registered at the instance of one Baljinder Kaur. They were thereafter arrested in the said FIR on 4.6.2006 and put up in the lock-up at 3.00 p.m. on 4.6.2006 vide DDR No. 13. In case, this plea of the police is accepted, then there was nothing to stop the police officials available in the Police Station to apprise the Warrant Officer about the formal arrest and bring to his notice DDR No. 14 by producing the Roznamcha itself. The initial conduct of AMHC Sat Pal, whom the Warrant Officer came across immediately on his entry into the Police Station, leaves many questions unanswered. Said AMHC was requested by the Warrant Officer to provide him the Roznamcha but in spite of the

same the AMHC did not stop and left the Police Station. The Warrant Officer, after locating all the three detenus in the Police Station accompanied the Sentry to the room of MHC, but even there, the Roznamcha was not found available nor the Sentry could locate the same despite his best efforts. The Sentry, it appears, also took the Warrant Officer to the place outside the main gate, where some chairs were lying but neither anybody was present there nor the Roznamcha was found available. After sometime had elapsed, respondent No. 3 along with MHC Partap Singh entered the Police Station. Simultaneously, AMHC Sat Pal reached there and at that point of time, he produced the Roznamcha. The Warrant Officer immediately put his initials at serial No. 18 in the Roznamcha, which was just below entry No. 17. It was at that point of time when the attention of the Warrant Officer was drawn to DDR No. 14 recorded in the Roznamcha at 3.00 p.m. regarding the bringing of the three detenus to the Police Station and putting them up in the lock-up as they could not furnish the bail bonds or produce the sureties. It is, thus, clear that Roznamcha, which was supposed to be kept in the Police Station all the time was not kept there and was available at some place, outside the precincts of the Police Station. MHC was not found available in his room and so also the Roznamcha. AMHC Sat Pal was present in the premises of the Police Station but he did not provide the Roznamcha to the Warrant Officer and instead left the Police Station. AMHC Sat Pal returned to the Police Station almost simultaneously when respondent No. 3 along with MHC Partap Singh reached. It was at that stage when the said Roznamcha was produced before the Warrant Officer for the first time, DDR No. 14 in respect of the putting up of the three detenus in the lock up at 3.00 p.m. was brought to his notice. All this suggests that the three detenus were being confined in the Police Station without there being any entry in the Roznamcha. It was only after the visit of the Warrant Officer that the police officials became active so as to forge and fabricate various entries to justify the presence of the three detenus in the Police Station. AMHC Sat Pal left the Police Station immediately in spite of being requested by the Warrant Officer to provide him Roznamcha and not to leave the Police Station.

8. Perusal of the Roznamcha shows that DDR No. 14 dated 4.6.2006 entered at 3.00 p.m. runs into only four lines. Thereafter, three more entries appear i.e. 15, 16 and 17 made at 4.00 p.m. 5.00 p.m. and 6.00 p.m. respectively. While the first entry consumed only one line, the other two entries consumed two lines each. In all, entries from Sr. Nos. 14 and 17 were recorded in 10 lines. This also shows that entries from serial Nos. 14 to 17 were recorded after the visit of the Warrant Officer, although they were purported to have been entered at 3.00 p.m., 4.00 p.m., 5.00 p.m. and 6.00 p.m. respectively.

9. There was another reason with the police not to formally arrest the three detenus on 4.6.2006. They appear to have been picked up from their village Dyalpura on 3.6.2006 at 10.00 a.m. as claimed by the three detenus or 12.00 noon as mentioned in the petition. All three of them were arrested for offences under Sections 447/506/34 IPC. All these offences were bailable in nature. It could not be expected

of the accused, who have been arrested in bailable offences, to not to be in a position to either furnish the bail bonds or produce sureties. In case they were formally arrested on 4.6.2006 by ASI Gurjant Singh, who was the Investing Officer of FIR No. 60, there had to be arrest memo/jamataalsi memo etc. available in the Police Station or with the Investigating Officer in case he was carrying the relevant case file with him. Message was conveyed by respondent No. 3 to ASI Gurjant Singh, who was on patrolling, to return to the Police Station but even after more than one hour thereafter, the said ASI Gurjant Singh did not return.

10. All the three detenus, who, as claimed by the police to have been arrested on 4.6.2006, were produced before a medical officer on 5.6.2006 for their medical examination as they were to be produced before the Court. Baljinder Singh was medico-legally examined on 5.6.2006 at 1.20 p.m. and the doctor found the following injuries on his person:-

1. An abrasion 3.5 cm x 3.5 cm on the nape of neck on the left side brownish in colour.
2. Diffuse swelling of left forearm, just proximal to wrist, Adv. X-ray.
3. An abrasion 10 cm x 2 cm on the poste-medial aspect of right leg associated with contused and swollen area of greenish black in colour. 6 cm x 6 cm on the posterior aspect of Rt. Leg in the middle.
4. A contusion of 5 cm x 1 cm on the lateral aspect of left leg associated with an abrasion 2 cm x 3 cm the front of left ankle joint. Probable duration of injuries between 48-72 hours.

11. Gurdev Singh detenu was examined on 5.6.2006 at 1.15 p.m. The doctor did not find any mark or injury on his body except one contusion which was 6 cm x 1 cm on the lateral aspect of his left leg in its middle. It was reddish brown in colour.

12. The third detenu, namely, Pappu Kumar was also examined at 1.30 p.m. on the same day and the following injuries were noticed on his person :

1. An abrasion 6 cm x 3 cm semi-circular in shape on the lateral angle of right scapula. Brown in colour.
2. A contusion of 18 cm x 2 cm extending 6 cm below lower lip of Rt. Scapula to 8 cm proximal to PSI spine crossing the middle. Brown petichal hemorrhage seen. Probable duration of injuries are within 48-72 hours.

13. All the aforementioned injuries on the persons of the three detenus were described to be of the probable duration between 48 to 72 hours. These injuries could well be caused by the police after 10.00/12.00 noon on 3.6.2006. All this shows that the three detenus were subjected to torture at the hands of the police. The medico-legal reports in respect of the three detenus were placed on record by the petitioner by filing Criminal Misc. No. 329 of 2006.

14. In view of the aforementioned circumstances, this Court finds that AMHC Sat Pal of Police Station Dyalpura (Bhai Ka) did not accede to the request of the Warrant Officer when he asked him to produce the Roznamcha and not to leave the Police Station. In spite of that said AMHC left the Police Station. He, thus, interfered in the administration of justice which makes him liable to be proceeded against u/s 12 of the Contempt of Courts Act. Accordingly, the office is directed to post the present petition for further hearing before an appropriate Bench so as to deal with AMHC Sat Pal u/s 12 of the Contempt of Courts Act.

15. In respect of the forging of entries in the Roznamcha, it would be appropriate if any enquiry is conducted by District and Sessions Judge, Bathinda, who will collect evidence regarding the apprehension of the three detenus by the police and their confinement in Police Station on 4.6.2006 at 3.00 p.m. vide DDR No. 14 by respondent No. 3 or on 3.6.2006 at 10.00/12.00 noon as claimed in the petition/statements of the three detenus recorded by the Warrant Officer on 4.6.2006 in the Police Station itself. The Inquiry Officer will also determine as to when the three detenus were caused injuries during their confinement at the hands of the police. In case, it is found out that the three detenus were confined illegally, Enquiry Officer may take necessary steps for initiating appropriate proceedings against the culprits.

16. The Roznamcha of Police Station Dyalpura, pertaining to the period 20.5.2006 to 26.6.2006, shall be retained till the final disposal of the present petition. Photocopies of all the entries contained in the said Roznamcha pertaining to 3.6.2006 and 4.6.2006 shall be transmitted to the District and Sessions Judge, Bathinda so as to assist the said Officer in coming to a just conclusion.