

(1998) 03 AHC CK 0149**Allahabad High Court****Case No:** Habeas Corpus Writ Petition No. 1620 of 1997

Udaybhan Shuki

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 18, 1998**Acts Referred:**

- Arms Act, 1959 - Section 25
- Constitution of India, 1950 - Article 14, 19, 21, 22, 22(1)
- Criminal Law (Amendment) Act, 1932 - Section 7
- Criminal Procedure Code, 1973 (CrPC) - Section 107, 112, 156(1), 156(3), 167
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 392

Citation: (1999) CriLJ 274**Hon'ble Judges:** S.K. Phaujdar, J; M.S. Gupta, J**Bench:** Division Bench**Advocate:** Daya Shankar Mishra, for the Appellant; A.G.A., for the Respondent**Final Decision:** Disposed Of**Judgement**

@JUDGMENTTAG-ORDER

1. Through this writ petition under Article 226 of the Constitution of India the petitioner has made a prayer for his immediate release from custody, for a writ in the nature of mandamus for a direction upon the C.J.M. Azarnagar for action u/s 156(3), Cr.P.C. against respondents No. 3 and 4 and other police officers for proceeding for contempt of Court against respondents No. 3 and 4 other police officers responsible for the arrest of the petitioner and for compensation and costs for his illegal arrest and detention. It is not disputed that the applicant was released on bail in relation to the criminal case for which he was allegedly arrested and as such the prayer for immediate release is not one to be considered in this application. The other prayers would be considered in the light of the averments, counter averments and the law on the point.

2. The respondents arrayed in the petition were : (i) The State of U.P. through the Home Secretary, (ii) The Senior Superintendent of Police, Azamgarh; (iii) Sri Anantdev Tiwari Circle Officer of Police, Azarngarh City and (iv) Sri Raj Narain Singh, Station Officer, Sidhari Police Station, Azamgarh.

3. The petitioner described himself as an advocate in the very description of the parties and slated that he was a peace loving law abiding citizen and was never prosecuted, convicted and or punished. There was no criminal history for the petitioner. He comes from an educated, aristocrats and established family and had been a law graduate and had been practising as an advocate since 1992 at Azamgarh. His professional duties required him to go to Allahabad High Court under instructions from his clients. One of his such clients was one Pankaj Pandey who was an under trial prisoner at Azamgarh District Jail. This Pankaj Pandey was wanted in case Crime No. 618 of 1996, police station Kotwali City, Azamgarh, and on his surrender before the Court on 8-10-1996 he was sent to custody. He was released on bail on 25-10-1996 and was actually released from the Jail at about 7.00 p.m. The surrender application of Pankaj Pandey was drafted and submitted by the present petitioner. Respondent No. 4, Sri Raj Narain Singh, had been the Station Officer at Mubarakpur on 9-10-1996 and a Case Crime No. 291 of 1996 u/s 392, I.P.C. was registered in his police station. The incident alleged therein had taken place at 9.30 p.m. The F.I.R. did not name Pankaj Pandey but Raj Narain Singh has manipulated to show Pankaj Pandey as an accused in that case in the course of investigation although Pankaj Pandey was in custody since 8-10-1996 Pankaj Pandey was similarly shown involved in two other cases which took place during his stay in custody. This Raj Naraian Singh was transferred to Sidhari on 30-10-1996. Here also Case Crime No. 507 of 1996 u/s 392, I.P.C. was registered against unknown accused persons for an incident allegedly taking place on 2.5-10-1996 at 9.00 a.m. In this case also Pankaj Pandey was shown as an accused during investigation. On the basis of these cases a proceeding under the U.P. Gangsters and Anti-Social Activities (Prevention) Act was initiated against Pankaj Pandey. The petitioner, as a counsel of Pankaj Pandey, made an application to the Court to the effect that Pankaj Pandey may not be committed in Case Crime No. 507 of 1996 as on the alleged date of the incident of that case he was already in custody. This application moved by the petitioner had engraved the respondent No. 4 against the petitioner and there was hot exchange of words between them over this issue. The petitioner had accompanied Pankaj Pandey to Allahabad in December, 1996, and met a Senior Advocate, Sri Daya Shankar Mishra, for presentation of a miscellaneous writ petition of criminal nature and it was registered as Writ Petition No. 4019 of 1996 (Pankaj Pandey v. State of U.P.). A direction was given by the Court on 10-12-1996 asking the respondents therein to file counter affidavit. The Station Officer, Sidhari, was also made a respondent in that writ petition. As the petitioner, in his professional capacity, had been helping Pankaj Pandey, respondents Nos. 3 and 4, Sri Anantdev Tiwari and Sri Rajnarin Singh, took ill of it and were prejudiced against the

petitioner.

4. The petitioner further stated with the aforesaid background that on 8-12-1996 he had gone to his relations in village Dhankpur, police station Sidhari, about two kilometers away from Azamgarh. In the night between 18/19-12-1996 respondent No. 4 came with police force to the house of the relation of the petitioner and unlawfully arrested him. This arrest was made without any warrant or authority and was prompted by personal grudge and vengeance although the petitioner had not committed any criminal act nor was wanted in connection with any criminal case. The petitioner insisted to know the reason of his arrest and the details of the case, if any, for which he was being arrested but he was not told anything except that everything would be told to him at the police station and he would taste the result of working for Pankaj Pandey. The respondent No. 4 took the petitioner to police station Sidhari and kept him in illegal custody. The respondent No. 3 was present at the police station when he was detained in the lock up. After some time he was taken out of the lock up and was questioned by respondents No. 3 and 4 as to why he was taking steps in the cases of Pankaj Pandey and as to why he moved a petition on his behalf before the High Court. The petitioner had replied that to get legal help was a Constitutional right of Pankaj Pandey and to give him a legal help was professional duty of the petitioner. On this reply respondent No. 4 became angry and started assaulting the petitioner with slaps and lathies. The petitioner suffered injuries. He was threatening that unless he stopped working for Pankaj Pandey he would suffer serious results. On 19-12-1996 at about 3.30 p.m. he was sent to the Court along with the four others. He was produced before the C.J.M., Azamgarh, at about 5.00 p.m. on 19-12-1996. A bail application was moved on his behalf and it was indicated that he was detained illegally. A prayer was also made for medical examination of the petitioner and the C.J.M. directed such medical examination. Bail was granted to the petitioner by the C.J.M. on 29- 12 -1996 and he came out of custody after furnishing bail bonds. His medical examination was conducted on 19-12-1996 at 6.30 p.m. and the doctor found injuries on his person. A reference was made to an E.N.T. Specialist for the injury on the ear and a supplementary injury report was issued. Immediately after the illegal arrest of the petitioner his relations sent a message to the District Judge, Azamgarh. His relations were also arrested in the night on 18/19-12-1996 but subsequently they were released from the police station.

5. The petitioner further stated that after his release on bail and after medical examination the applicant moved an application before the C.J.M., Azamgarh, u/s 156(3), Cr. P.C. for action against respondents No. 3 and 4 for his illegal arrest and for the third degree methods applied on him and for causing injuries to him. A direction was given to the S.S.P., Azamgarh, to look into the matter and, if the allegations were found to be true, to institute a case therefore, but nothing was done by the S.S.P. Azamgarh, till the date of the filing of the application. When he was produced before the C.J.M. the petitioner could know for the first time that he

was shown arrested in case crime No. 615 of 1996 under Sections 147 148 149 and 307, I.P.C. along with Ashok Singh, Lalchand Yadav, Piyus Kumar and Gopal Pandey for an incident that had allegedly taken place in the mid-night of 18-12-1996. The story as made out by the police, was stated to be absolutely, false, the applicant never knew the other accused persons shown involved with him. Even in that F.I.R. no allegation was made against the petitioner for having used any fire-arms or having caused any injury to anybody. His arrest had violated the provisions of Articles 14 19 21, 22(1) 22(2) of the Constitution of India and Sections 50(1) and 167, Cr.P.C. It was stated that the S.S.P. was intentionally flouting the order of the C.J.M. and the fact of arrest of the petitioner for having rendered legal help to an accused was a contumacious act and respondent Nos. 3 and 4 were liable for contempt of Court.

6. A counter affidavit was filed by Rajnarin Singh, respondent No. 4. This police officer asserted that a case against the petitioner in Case Crime No. 615 of 1996 under Sections 147 148 149 and 307, I.P.C. read with Section 7 Criminal Law Amendment Act dated 19-12-1996 was initiated and after completion of investigation charge sheet had been submitted prior to the date of filing of the counter affidavit. It was further stated that the petitioner was not detained any more in custody. For accused Pankaj Pandey it was stated that he was required in Case Crime No. 618 of 1996 dated 8-10-1996 police station Kotwali, district Azarngarh, and he had surrendered before the C. J. M. and was bailed out on 25-10-1996. Concerning Case Crime No. 291 of 1996 this police officer stated that the case was investigated by another Sub-Inspector and during his stay at police station Muharakpur the name of Pankaj Pandey had not come up in that case, his name came to light only on 23-11 -1996 deponent had no hand in naming Pankaj Pandey in that case. Concerning Case Crime No. 293 of 1996 of, Mubarakpur police station, it was stated that the case was registered on 11-10-1996 and investigation was not taken up by him. Although the name of Pankaj Pandey came up on 9-11-1996 the allegation was found untrue and his name was dropped from investigation. In connection with case Crime No. 326 of 1996, this deponent stated that it was registered on 25-10-1996 against unknown persons and investigation was not done by him. For Case Crime No. 507 of 1996 also the case was registered against unknown accused persons and Pankaj Pandey had managed to escape at the time of search and seizure, one Ram Aasan Singh was arrested at the spot when a Honda motorcycle was recovered. Only after investigation, charge, sheet was submitted against Pankaj Pandey and investigation in that case was done not by the deponent but by one G.G. Diwedi. The initiation of the case under the Gangsters act on the basis of the aforesaid four cases had not been done by the deponent and the proceeding was initiated by Kotwali police station. It was stated that a case was made out in paragraphs 13, 14 and 15 of the writ petition only for the purpose of the present writ petition. The deponent was in no way prejudiced or biased against the petitioner. The deponent asserted further that on 18-12-1996 at about 11.15

p.m. the petitioner was arrested along with co-accused persons Ashok Kumar Singh, Lal Chandra Yadav, Piyush Kumar and Gopal Pandey. When this arrest was made Ashok Kumar Singh, who was notorious criminal, had opened fire on the police force and some other co-accused had been found in possession of Rifle and Katta. Ashok. Kumar Singh was a proclaimed offender for whom a reward was also declared, Police had reached the spot on a tip off from an informer and (he petitioner was also found with these persons and he had also opened fire on the police persons. Police had to retaliate with fire to make the arrest. It was further asserted that after such arrest three cases bearing Nos. 615 of 1996, 616 of 1996 and 617 of 1996 were registered at police station, Sidhri. The cases were investigated by S.I. Sri Umesh Chandra Jaiswal and charge sheets have been submitted in Court. It was claimed by the deponent that when the petitioner was arrested he was clearly given the reasons of his arrest, the details whereof were there in the paper concerning seizure and arrest which was appended as Annexure C.A. 1. In the retaliatory fire by police the petitioner also suffered injuries which was indicated in the general diary of a Sidhri police station at 2.10 a. m. of 19-12-1996 and this general diary was marked as Annexure C.A. 1. The petitioner was told the reason of his arrest when he was arrested, he was sent to Court on 19-12-1996 at 11.20 a.m. and the general diary in this respect was placed as Annexure C.A. 3. The injuries that were suffered at the time of the arrest were treated at the Government Hospital under orders of the Court. No man named Sandeep was arrested in the night of 18/19-12" 1996. The application of the petitioner u/s 156(3), Cr.P.C. was placed before the C.J.M. Azamgarh, and the Court had directed the S.S.P. to make an enquiry and to take up investigation if the facts were true. There was no torture or assault on him by the petitioner or others.

7. No other respondent came up with any counter affidavit. We are, therefore, to take up the matter on the basis of the materials that have come through the affidavit and counter affidavit as have- been indicated above and the law that has been explained before us by the learned counsel,

8. We shall take up the prayers one by one and in that light refer to the facts relevant in relation to such prayers. The first prayer made before us relates to a writ of habeas corpus for production of the petitioner before the Court and for his immediate release and for his being set at liberty forthwith. Undisputedly, the applicant was released on bail and is being physically released from custody does not arise. The learned counsel for the petitioner, however, submits that his custody still continued as he was released on bail and is not at liberty to move freely. In this connection the learned counsel for the petitioner relied on the decision of the Allahabad High Court in the case of Zahir Ahmad Vs. Ganga Prasad, A.S.D.M., Ballia and Another, it was observed by a Division Bench of this High Court that the fact that a person had been granted bail did not amount to his being set at liberty. It was true that after bail was granted, he was no longer in physical custody in the sense of being in a prison but it was difficult to say that he had liberty of action or even

complete liberty of movement as he continued to remain under the control of the Court and notionally in the custody of the Court. The Court held on this reasoning that even a person who had been temporarily let out on bail but was still on trial would present an application for a writ of habeas corpus under Article 226 of the Constitution.

9. Zahir Ahmad in that case had made the application for a writ of habeas corpus to set him at liberty under certain backgrounds. A report was made to the S.D.M. by an S.I. of Police for action u/s 107, Cr.P.C. against Zahir Ahmad. The case was transferred to the Additional S.D.M. No order in writing was made by the Additional S.D.M. setting forth the substance of the information received, the amount of the bond to be executed, the term for which it was to be in force and the number, character and class of sureties required as provided under the law. He had simply issued notices along with warrants of arrest and as such is was argued that the order was not one u/s 112, Cr.P.C. and upon a preliminary objection the Division Bench had opined that although he was on bail the habeas corpus petition would lie at the instance of Zahir Ahmad.

10. On the facts of the case, however, the Division Bench was satisfied that in substance the provisions of Section 112, Cr.P.C. had been complied with and consequently it was of the view that under the circumstances operating in the case it was not possible to hold that the petitioner was being illegally detained. It was thus a case where the very detention was challenged due to some illegality in the initial order although the petitioner was released on bail. In the case at our hands the detention is said to be illegal for non compliance of certain provisions of the constitution and certain directions of the Cr.P.C. It is stated that the petitioner was not told the reasons of his arrest as required u/s 50 of the Cr.P.C. and was produced before the Court and the Court had no authority to remand him or even release him on bail rather the Court should have release him forthwith because of his unlawful arrest.

11. The aforesaid contention of the learned counsel for the petitioner is not acceptable to us. Even conceding that the applicant was not told the reasons of his arrest as required u/s 50(1) of the Cr.P.C., his production before the Court was made with an allegation of his involvement in a substantive case. Once the applicant was produced in Court the provisions of Section 167, Cr.P.C. would apply. This section states that whenever any person is arrested and detained in custody and the investigation cannot be completed within a period of 24 hours, he is to be produced before the nearest judicial Magistrate with the relevant entries in the diary. After his arrest the applicant was produced before a Magistrate. Section 167(2), Cr.P.C. requires that when such a person has been produced before a Magistrate he may authorise the detention of the accused in such custody as such Magistrate may think fit. u/s 437, Cr.P.C. the Magistrate was also empowered to grant him bail instead of sending him to custody. An order of the Magistrate either directing remand of the

accused in custody or directing his release on bail may not be affected by any initial defect in the making of arrest. Thus the present custody of the petitioner, as being on bail under orders of the Court, may not be treated to be a wrongful detention and although suitable action may lie against the concerned police officer for non-compliance of Section 50(1), Cr.P.C., there may not be an order directing the petitioner to be set at liberty the effect of which would be to discharge him from his bail bonds. In this connection a Full Bench decision of this High Court in the case of *Bal Mukund Jaiswal v. Superintendent, District Jail, Varanasi* as per Habeas Corpus Writ Petn. No. 9061 of 1994 reported in 1998 All LJ 1428 is relevant. This order was passed by the Full Bench when the matter was referred to it for answering a particular question. The Full Bench answered the question as follows (at p. 1430 of All LJ) :-

Where an accused person is in judicial custody on the basis of a valid remand order passed u/s 209 or 309 Code of Criminal Procedure by the Magistrate or by any other competent Court then such accused person cannot be set at liberty by issuing a writ of habeas corpus solely on the ground that his initial detention was violative of a constitutional guarantee enshrined in Articles 21 and 22 of the Constitution of India.

12. In view of the aforesaid reasonings given by us and in view of the Full Bench decision, we are unable to hold that the petitioner's first prayer is tenable simply on the ground of alleged wrongful arrest.

13. The second prayer of the petitioner relates to a direction upon respondents No. 1 and 2 for recording a cognizable case against the concerned police officers (respondents No. 3 and 4 and others) on the basis of the direction of the C.J.M. Azamgarh. It appears that for his wrongful detention and for assault on him by the concerned police officer the applicant had moved an application before the C.J.M. Azamgarh, u/s 156(3), Cr.P.C. and an order had been passed by the learned C.J.M. who by his order dated 23-12-1996 directed the Senior Superintendent of Police , Azamgarh, to get the matter enquired by some Senior Officer and if the allegations were true then to take up investigation according to law. Although in the normal course an action by a Court may be challenged by an aggrieved party through an application u/s 482, Cr.P.C. we feel that when the whole matter is before us in this writ petition we may not lose sight of the fact of recording of the aforesaid order by the C.J.M. even in exercise of empowers under Articles 226 and 227 of the Constitution of India and u/s 483, Cr.P.C. Section 156(3), Cr.P.C. empowers the C.J.M. to order an investigation as is thought of u/s 156(1), Cr.P.C. that is, in respect of a cognizable case. This power of the Court may be delegated to the police for making a preliminary enquiry and only thereafter to start an investigation. That part of the order of the C.J.M. must be deemed to be beyond his powers u/s 156(3), Cr.P.C. and when the application of the present petitioner before the C.J.M. *prima facie* disclosed a cognizable case, the C.J.M. should have directed investigation according to law. Whether on investigation a charge sheet would (sic) was another matter

which would depend on the materials collected during investigation. We would direct that a case be registered at the concerned police station Sidhari for the offences indicated in the application of Sri Udayabhan Shukla presented before the C.J.M. and investigation be taken up by some Senior Officer not below the rank of a Deputy Superintendent of Police. This direction applies to the Senior Superintendent of Police, Azamgarh, for necessary compliance.

14. As regards the third prayer is concerned, it has been stated that respondents No. 3, 4 and other police officers are liable to be prosecuted, for contempt of Court. In the course of argument, it was stated that there was violation the definite directions of the Supreme Court as given in the case of D.K. Basu Vs. State of West Bengal. The order was passed by the Supreme Court on 18-12-1996. Eleven requirements were enunciated by the Supreme Court which were to be followed in all cases of arrest or detention. Paragraph 37 of the judgment further stated that "Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

15. In the instant case the alleged arrest was made on the night between 18/19-12-1996. While it must be held that the directions given by the Supreme Court were equally applicable to the present case also, a question would always crop up if the order dated 18-12-1996 could come to the knowledge of the concerned police officers that very night and if they could be held for a consequent violation of the order of the Supreme Court making them liable for contempt of Court. In view of the fact that the directions of the Supreme Court was passed on that very date on which the alleged detention was made, and in view of the fact that the proceedings for contempt may entail in punishment and was thus criminal in nature, a benefit may always be given to the concerned police officers at least for this occasion and a proceeding for contempt of Court I may not be initiated.

16. Coming to the last prayer, we believe, the learned counsel had made most of his arguments on this point. It was asserted that there was gross violation of the provisions of the constitution guaranteeing personal liberty to the citizens as also of the statutory provisions concerning mode of arrest and the petitioner was entitled to be adequately compensated by the offending police officers and an exemplary compensation should be awarded against them so that they may not dare to flout the law in future and the punishment may act as a deterrent to other police also.

17. On this point the averments of the petitioner are there in paragraphs 18 onwards of the writ petition. It was stated that the petitioner had gone to his relations in village Dhanakpur, police station Sidhari, district Azamgarh, on 18-12-1996. In the midnight of 18/19-12-1996 respondent No. 4 (Raj Narain Singh, then the Station Officer, Sidhari) came with police force to the house of this relation

in village Dhanakpur and illegally arrested the petitioner without any warrant or authority and only with a view to avenge personal grudge. It was indicated in other paragraphs of the writ petition that the police officers bore a grudge against him as the petitioner, in his capacity as an advocate, had been persistently taking steps and appearing on behalf of an accused Pankaj Pandey. The petitioner stated that he had not committed any criminal act nor was required in any criminal case. The petitioner further asserted that he persistently asked the police officers the reasons and grounds of his arrest and the details thereof but he was not told such reasons or grounds at any point of time. He was simply told that he would get all answers at the police station and he would taste the result of taking steps on behalf of Pankaj Pandey. The petitioner further stated that after such illegal arrest the petitioner was taken to police station Sidhari and was detained in the lock up. It was stated that at the police station respondent No. 3 (Anant Dev Tiwari, circle officer Nagar, Azamgarh) was also present when the petitioner was brought at the police station and was detained in the lock up. It was asserted that afterwards he was questioned by respondent No. 4 in presence of respondent No. 3 as to why the petitioner had been taking steps on behalf of Pankaj Pandey in the criminal cases even at the level of the High Court. The petitioner claimed to have humbly answered that it was professional duty to take proper steps for his client. Upon this answer respondent No. 4 flared up and started assaulting the petitioner with slaps and lathies and the petitioner suffered injuries. The respondent No. 3 also joined hands in this inhuman and uncivilised assault and torture upon the petitioner. They had threatened the petitioner in abusive language with dire consequence if he continued to appear for Pankaj Paridey. Despite his repeated requests he was not told by respondents Nos. 3 and 4 the reason for his arrest, the grounds thereof or any detail in that respect. It was further stated that on 19-12-1996 at about 3.30 p.m. he was sent from the police station along with four others for the Court. They were produced before the Court at 5.00 p.m. on that day and the petitioner made an application for bail in which he had clearly indicated how illegally he was arrested with fake allegations. The bail application which is Annexure No. 1, however, simply stated that the applicant was innocent and was arrested only with a view to harass him as the police officers bore a grudge against him for having appeared for accused Pankaj Pandey. The case against him was described as based on fake allegations. Not a single line was indicated in the bail application that he was not told the reasons of his arrest, rather in the bail application that was presented undisputedly on 19-12-1996 the case crime number together with the sections of the offences were mentioned.

18. These allegations were met by respondent No. 4 Rajnaraian Singh, in his affidavit at paragraph 15 onwards. It was stated that on 18-12-1996 at about 11.15 p.m. the petitioner was arrested at village Dhanakpur, police station Sidhari, along with co-accused Ashok Singh, Lalchand Yadav, Piyush Kumar and Gopal Pandey. At the time of the arrest Ashok Singh and his associates opened fire on the police force and from the Co-accused persons Rifle, Katta and cartridges were recovered. There

had been an award on the arrest of Ashok Singh. Police reached the spot on source information and had found the petitioner also at the spot he too had opened fire on the police force. After arrest three cases bearing Nos. 615 of 1996, 616 of 1996 and 617 of 1996 were started at police station, Sidhari, and the matters were investigated by Sub-Inspector Sri Umesh Chandra Jaiswai and charge-sheets were submitted in all these cases.

19. Paragraph 17 of the counter-affidavit states that at die time of arrest the petitioner and his associates were told the grounds and reasons of arrest and this fact stood mentioned in the papers concerning recovery and arrest as per Annexure C.A. 1. In the concerned incident the miscreants had opened fire and police also retaliated and the petitioner suffered injuries and the fact stood mentioned in general diary, No. 2 recorded at 2.10 a.m. at the police station Sidhari on 19-12-1996 as per Annexure C.A. 2. The petitioner was told clearly why he was arrested. They were forwarded to Court at about 11.20 a, m. as per general diary in Annexure C.A. 3. The injuries suffered by the petitioner at the time of the arrest were examined by the doctor and reference thereof was there in the general diary.

20. Annexure C.A. 3 is a copy of the fard baramdgi (seizure paper), upon which the three aforementioned cases 615 of 1996, 616 of 1996 and 617 of 1996 were started. The petitioner was shown involved in Case No. 615 of 1996. Case 616 of 1996 was lodged against Gopal Pande under the Arms Act and Case No. 617 of 1996 was lodged against Lalchand Yadav only under the Arms Act. The fard baramdgi further indicated that the accused persons were arrested after telling them that they were being apprehended for offences under Sections 307 and 25 Arms Act.

21. From the facts that have come on record there are two versions regarding the place of arrest. The petitioner states that he was arrested from the house of his relation but the respondents claim that he was arrested while he was moving with other co-accused persons. The writ court may not proceed to determine this disputed question of fact which may be left for determination by the trial court. It is the petitioner's further case that he was never told the grounds of arrest despite repeated demands while the respondents took up a plea that he was told, as per the fard baramdgi itself, that he was being arrested for an offence u/s 307 IPC. This disputed fact may not also be probed into by the writ court as observed by a Division Bench of the Allahabad High Court in Vimal Kumar Sharma's case 1995 All WC 424 : 1995 All LJ 797 paragraph 7. We are, therefore, confined to the assertion that the petitioner was told at the time of his arrest, wherever it was made, that he was being arrested for an offence u/s 307 IPC. We would now see if this was sufficient compliance of the provision of law.

22. Section 50 of the Cr.P.C. states that every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. This provision flows from the Constitution of India as provided in Article 22. This Article protects a

citizen against arrest and detention in certain cases and states that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest. The article further requires that every person who is arrested or detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. Article 21 of the Constitution protects personal liberty of a citizen and states that no person shall be deprived of his life or personal liberty except according to procedure established of law. Section 50(1) Cr.P.C. is such a procedure established by law and it echoes the requirement of Article 22 that a person after being arrested is to be informed the grounds for such arrest.

23. It was argued that merely stating that the petitioner was being arrested u/s 307 IPC was not sufficient as no gun was recovered from him nor any case under the Arms Act was initiated against him. It was contended that there could not have been a charge u/s 307 IPC against the petitioner and even the fard baramdgi did not indicate that the petitioner was being arrested for an offence u/s 7 of the Criminal Law Amendment Act.

24. In the instant case it would be unwise for the Writ Court to go to decide the merits of the defence case. A decision on the relevant question is to be arrived at on the averments made in the prosecution papers and if it is found by the trial court at a subsequent stage that certain allegations were false or the defence averments were true the petitioner may be entitled to such relief as the law provides for him. In the instant case we shall confine ourselves to the fact that at the time of arrest the petitioner was informed that he was being arrested for an offence u/s 307 IPC. It is true that another offence u/s 7 of the Criminal Law Amendment Act was also charged against him. We are, therefore, left to the question whether non-mention of this section would be such a violation of Section 50(1) Cr.P.C. or Article 22 of the Constitution of India as would require a stricture or other action against the concerned police officer. As per the prosecution allegations, there had been an exchange of fire between certain miscreants and police party and in that process the petitioner and others were arrested. It is not a case where for some offence committed earlier the petitioner was being arrested either, on suspicion or on materials gathered against him.

25. Under these circumstances, in our view, even if the petitioner was told that he was being arrested for an offence u/s 307 IPC, it would be deemed sufficient compliance of Section 50(1) of the Cr.P.C. and thereby of Article 22 of the Constitution also. This opinion of ours further gains support from the fact that immediately on his production before the Magistrate on 19-12-96 the applicant moved a bail application in which all sections for which he was booked were mentioned and the only averment regarding arrest was that he was arrested at another place and was forwarded on fake allegations. No plea was taken that he did

not know till the filing of the bail application the grounds of his arrest. Rather mention of sections suggests that he knew them which implies information to him by the prosecuting authority of the grounds of his arrest. On this interpretation of the facts that have come before us, we are of the view that the prayer made by the petitioner for compensation for his arrest in violation of the provisions of Article 22 and Section 50(1) of the Cr.P.C. may not be accepted.

26. The petitioner is not entitled to prayers No. 1, 3 and 4. So far prayer No. 2 is concerned, the directions given by this court upon the Senior Superintendent of Police, Azamgarh, in the concluding lines at page 11 of this judgment be complied with immediately, so that a case be registered at the concerned police station, Sidhari, for the offences indicated in the application of Udaybhan Shukla presented before the C.J.M. Investigation be taken up by some Senior Officer not below the rank of a Deputy Superintendent of Police.