

(1985) 11 SC CK 0010

Supreme Court of India

Case No: Writ Petition (Criminal) No. 1450 of 1985

Bhim Singh, MLA

APPELLANT

Vs

State of Jammu & Kashmir and
OthersRESPONDENT

Date of Decision: Nov. 22, 1985**Acts Referred:**

- Constitution of India, 1950 - Article 21, 22(2)

Citation: (1986) ACJ 867 : AIR 1986 SC 494 : (1986) CriLJ 192 : (1985) 2 SCALE 1117 : (1985) 4 SCC 677 : (1986) 1 UJ 458**Hon'ble Judges:** V. Khalid, J; O. Chinnappa Reddy, J**Bench:** Division Bench

Judgement

O. Chinnappa Reddy, J.

Shri Bhim Singh, a Member of the Legislative Assembly of Jammu & Kashmir, incurred the wrath of the powers that be. They were bent upon preventing him from attending the session of the Legislative Assembly of Jammu & Kashmir, which was to meet on 11th September, 1985. That appears to be the only inference that we can draw from the circumstances of the case to which we shall now refer. On August 17, 1985, the opening day of the Budget Session of the Legislative Assembly, Shri Bhim Singh was suspended from the Assembly. He questioned the suspension in the High Court of Jammu & Kashmir. The order of suspension was stayed by the High Court on 9th September, 1985. On the intervening night of 9th-10th September, 1985, he was proceeding from Jammu to Srinagar. En route, at about 3.00 AM (on 10th), he was arrested at a place called Qazi Kund about 70 kms. from Srinagar. He was taken away by the police. As it was not known where he had been taken away and as the efforts to trace him proved futile, his wife Smt. Jayamala, acting on his behalf, filed the present application for the issue of a writ to direct the respondents to produce Shri Bhim Singh before the court, to declare his detention illegal and to set him at liberty. She impleaded the State of Jammu & Kashmir through the Chief Secretary as

the first respondent, the Chief Minister, the Deputy Chief Minister and the Inspector General of Police, Jammu & Kashmir as respondents 2, 3 and 4. On September 13, 1985, we directed notice to be issued to the respondents and we also directed the Inspector General of Police to inform Smt. Jayamala where Shri Bhim Singh was kept in custody. On September 16, 1985, Shri Bhim Singh was released on bail by the learned Additional Sessions Judge of Jammu before whom he was produced. Shri Bhim Singh filed a supplementary affidavit on 20th September, 1985 stating more facts in addition to what had already been stated by Smt. Jayamala in the petition. He categorically asserted that he was kept in police lock up from 10th to 14th and that he was produced before a Magistrate for the first time only on the 14th. Thereafter on 24th September, 1985, we issued notice to the Director General of Police, State of Jammu & Kashmir, Mr. Mir, Superintendent of Police, Anantnag, Mohd. Shafi Rajguru, Inspector of Police, Amin Amjun, Deputy Superintendent of Police, Udhampur, Gupta, Deputy Superintendent of Police, Jhajar Kolli and the Officer-in-charge of Police Station Satwari. A counter affidavit has been filed on behalf of the State of Jammu & Kashmir by Abdul Qadir Parrey. Affidavits have also been filed by M.M. Khajuria, Inspector General of Police, M.A. Mir, Superintendent of Police, Anantnag, Mohd. Shafi Laigroo, Inspector of Police, District Police Lines, Anantnag, Mohd. Amin Anjum, Deputy Superintendent of Police Headquarters, Udhampur and Rajinder Gupta, Probationary Deputy Superintendent of Police, Udhampur. Shri Bhim Singh has also filed a rejoinder affidavit.

2. From the affidavits filed by the several police officers, it transpires that an FIR u/s 153-A of the Ranbir Penal Code was registered against Shri Bhim Singh on September 9, 1985 at Police Station Pacca Danga, Jammu on the allegation that he had delivered an inflammatory speech at a public meeting held near Parade Ground, Jammu at 7.00 P.M. on September 8, 1985. The office-in-charge of Police Station Pacca Danga brought the matter to the notice of the Senior Superintendent of Police, Jammu, who in turn informed the Deputy Inspector General of Police of Jammu range. On 10th September, 1985, requisition for the arrest of Shri Bhim Singh was sent to the Superintendent of Police, Anantnag through the Police Control Room, Srinagar. This fact is sworn to by Shri M.M. Khajuria, Inspector General of Police, Jammu & Kashmir. Shri M.A. Mir, Superintendent of Police, Anantnag has, however, stated in his affidavit that on September 9, 1985 at about 11.30 PM, he was informed by the Police Control Room, Srinagar that Shri Bhim Singh, MLA was required to be apprehended as he was wanted in a case registered u/s 153-A of Ranbir Penal Code. According to him, he immediately directed the Office-in-charge of Police Station Qazi Kund that Shri Bhim Singh may be apprehended as and when he reached his jurisdiction. He further instructed him that he should be brought to the District Headquarters, Anantnag after his arrest. These statements are obviously untrue in view of the affidavit of Shri Khajuria, Inspector General of Police that the information, to the Superintendent of Police Anantnag was conveyed through the Police Control Room, Srinagar on 10th September, 1985. Shri Mir has not chosen to

explain why he expected Shri Bhim Singh to pass through Qazi Kund that night. Quite obviously even before he had received any information from the Police Control Room about the alleged case registered against Shri Bhim Singh, Shri Mir had instructed the Officer-in-charge Police Station Qazi Kund to arrest Shri Bhim Singh if he came within his jurisdiction. Whether he did it on his own and if so, for what reason or whether he did it on other instructions received by him is a matter which requires our consideration. At about 3,00 AM, according to Shri Mir, Shri Bhim Singh was arrested at Qazi 1 Kund by the Officer-in-charge of Police Station Qazi Kund and brought to the District Headquarters where it appears Shri Bhim Singh was provided with facilities for rest, wash, breakfast, etc. It is necessary to mention here that no affidavit has been filed before us by the Officer-in-charge of Police Station Qazi Kund, the officer who arrested Shri Bhim Singh. It appears that under the orders of the Superintendent of Police, Anantnag, Shri Bhim Singh was taken from Anantnag by Shafi Laigroo, Inspector of Police, District Police Lines, Anantnag in a Matador at about 7.30 AM on 10th September, 1985. They reached, according to Mohd. Shafi Laigroo, Batota at 2.00 PM where Bhim Singh was provided with lunch. They reached Udhampur at 5.00 PM where Bhim Singh was provided with tea and finally they reached Jammu city Police Station at 7.30 PM. There they learnt that Bhim Singh was wanted in connection with a case registered by the police of Pacca Danga Station. He was, therefore, taken to Pacca Danga Police Station and handed over to the Officer-in-charge of Pacca Danga Police Station. Mohd. Amin Anjum, Deputy Superintendent of Police Headquarters, Udhampur and Shri Rajender Gupta, Probationary Deputy Superintendent of Police, Udhampur were directed by the Senior Superintendent of Police, Udhampur to see to the safe passage of Bhim Singh through Udhampur District. They were informed that Bhim Singh was taken from Anantnag to Jammu in a Matador. So they followed the Matador in which Bhim Singh was being taken from Chenani Police Station to Jammu and thereafter returned to their respective stations. According to the Inspector General of Police, Shri Bhim Singh was taken to Police Station Pacca Danga at about 9.30 PM. On 11th September, 1985, a remand to police custody for two days was obtained from an Executive Magistrate First Class. A copy of the application for remand made in Urdu with the endorsement of the Executive Magistrate First Class has been filed as an annexure to the affidavit of Shri Khazuria. The endorsement says, "Remanded for two days with effect from 11th instant". It is signed by the Magistrate and dated 11th "September, 1985. Neither the application nor the endorsement shows that Shri Bhim Singh was produced before the Magistrate when remand was sought. Shri Bhim Singh expressly denied that he was produced before any Magistrate on 11th. With reference to the remand obtained on 11th September, 1985, Shri Khazuria does not state in his affidavit that Shri Bhim Singh was produced before the Executive Magistrate First Class on 11th September, 1985. But in very careful and guarded language he says, "A remand to police custody for two days was obtained by Pacca Danga Police Station from Executive Magistrate First Class on 11th September, 1985". The Officer-in-charge Police Station, Pacca Danga has not filed any affidavit. It

has to be mentioned here that Shri Bhim Singh moved an application before the Executive Magistrate on 24th October, 1985 to be informed as to the time when remand was obtained from the Magistrate. The Magistrate made the following endorsement on the application of Shri Bhim Singh :

Returned in original to the applicant with the remarks that the remand application was moved before me by the SHO Pacca Danga Jammu on 11th September, 1985 after office hours in the evening at my residence and the (illegible) remanded the applicant in police custody for a period of two days alone.

On the expiry of the remand of two days granted by the Executive Magistrate, a further remand was obtained for one day, this time, not from the Executive Magistrate First Class, but, from the Sub-Judge. It was probably thought not wise to go before the same Magistrate and ask for a second remand. The application made in Urdu to the Sub-Judge with the endorsement of the Sub Judge has also been filed as an annexure to (he Affidavit of Shri Khajuria. The endorsement of the Sub Judge reads :

Application for police remand has been moved by Shri Bansi Lal (illegible) S.H.O. P/S Pacca Dana with the submission that the accused Shri Bhim Singh is sick (Medical Certificate attached) and he be removed to the Police lock up as the investigation in the case is still in progress.

Perused the police diaries with the SHO and also promised the medical (illegible) examination slip. The accused is authorised to be left in police lock up for one day. The accused be produced in the court by tomorrow for further necessary remand orders.

The endorsement is signed by the Sub Judge and is dated 13th September, 1985. We have again to mention here that Shri Bhim Singh requested the Magistrate to give him a copy of the Medical certificate purported to have been submitted by the S.H.O. Pacca Danga. On this application, the Sub Judge made the following endorsement :

Shri Bhim Singh has moved an application requesting this court to certify the time when the police remand application was moved before me by police P/S Pacca Danga on 13.9.85. The application is also accompanied with a photostate copy of the remand order passed by me on 13.9.1985 as a duty Magistrate. The application in original was forwarded to the I/C police Station Pacca Danga for report and production of case diaries of the case for perusal, but it has been reported that the case diaries are with SHO who is out on law and order duty.

From the perusal of the photostate copies of the remand order and from my recollection, it is certified that the remand application was moved before me at my residence after court hours in the evening.

Shri Bhim Singh swears in his rejoinder affidavit that he was not produced before the Sub Judge on 13th, nor was he examined at any time by any doctor. Shri Khajuria in his affidavit again uses very careful language and says, "On the expiry of this remand, an application for further remand was submitted before the Sub Judge (Judicial Magistrate First class) on 13th September, 1985, who extended the remand by one day". Shri Khajuria does not say a word about Shri Bhim Singh having been examined by any doctor. He makes no reference to the production of any medical certificate before the Sub Judge. As already mentioned, the officer-in-charge of the Pacca Danga police Station has not filed any affidavit before us. Thereafter on 14th September, 1985, Shri Bhim Singh was produced before the Sub Judge and was remanded to judicial custody for two days with a direction to produce him before the Sessions Judge, Jammu on 16th September, 1985. He was accordingly taken to the court of the Sessions Judge on 16th September, 1985, but as the Sessions Judge was absent, he was produced before the Additional Sessions Judge. He was released on bail on his personal bond by the Additional Sessions Judge. That he was produced before the Magistrate on 14th, remanded to judicial custody for two days, produced before the Additional Sessions Judge on 16th and released on bail are facts which are not disputed by Shri Bhim Singh. In his affidavit when he reference to the events of 14th and 16th September, 1985, Shri Khajuria takes good care to use the words "produced before the Sub Judge" and "produced before the Additional Sessions Judge". As mentioned by us earlier, with reference to the events of 11th and 13th September, 1985, Shri Khajuria very carefully refrained from using the word "produced". He merely said "remand was obtained". Shri Bhim Singh in his supplemental and rejoinder affidavits has stated certain facts relating to alleged further harassment by the police. We are not concerned with those further facts for the purposes of this case. We are only concerned with the detention of Shri Bhim Singh from 3.00AM on 10th September, 1985 until he was produced before the Sub Judge on 14th September, 1985. The two remand orders said to have been made by the Executive Magistrate First Class and Sub Judge on 11th and 13th September, 1985 respectively do not contain any statement that Shri Bhim Singh was produced either before the Executive Magistrate First Class or before the Sub Judge. The applications for remand also do not contain any statement that Shri Bhim Singh was being produced before the Magistrate or the Sub Judge. Shri. Khajuria, the Inspector General of police has very carefully chosen his words and stated in the affidavit that remand orders were obtained. He refrained from stating that Shri Bhim Singh was produced before the Magistrate or the Sub Judge on 11th and 13th. The Medical Certificate referred to in the application dated 13th September, 1985 has also not been produced and Shri Khajuria makes no reference to it in his affidavit. In addition we have the important circumstance that no affidavit of the officer in charge of the Police Station Pacca Danga has been filed before us. Nor has the affidavit of the officer, who arrested Shri Bhim Singh been filed before us. At the time of hearing the petition on 19th November, 1985, Shri E.G. Aggarwal stated to us that the affidavits of the two police officers had been got ready but were mislaid. He tried to

show us some photo-stat copies of the alleged affidavits and prayed that the case might be adjourned for filing the affidavits of the two police officers. We refused to accede to the request. There was ample time for the respondents to file the affidavits of the two police officers after we issued notice to the respondents. It is not disputed that right from the beginning, they were aware of the writ petition filed in this court. The affidavits of Shri Khajuria and others were filed as far back as 16th October, 1985 and there was no reason whatsoever for not filing the affidavits of the two police officers at that the time. When the complaint was of illegal arrest and detention, the least one would expect the respondents to do is to file the affidavits of the officer who arrested the petitioner and the officer who produced him before the Magistrate for the purpose of obtaining orders of remand. Instead of filing their affidavits, several inconsequential affidavits were filed perhaps only to confuse the issue. Shri Khajuria, the Inspector General of police filed a lengthy affidavit containing statements of fact, most of which he could not be personally aware. However, he chose to use careful language, as pointed out by us, whenever he referred to the remand of Shri Bhim Singh or his production before a Magistrate or Sub Judge. We are convinced that the failure to file the affidavits of the officers, who arrested Shri Bhim Singh and the Sub-Inspector, incharge of Pacca Danga Police Station was deliberate. They were to be kept back until there was dire necessity. We do not have the slightest hesitation in holding that Shri Bhim Singh was not produced before the Executive Magistrate First Class on 11th and was not produced before the Sub Judge on 13th. Orders of remand were obtained from the Executive Magistrate and the Sub Judge on the application of the police officers without the production of Shri Bhim Singh before them. The manner in which the orders were obtained, i.e., at the residence of the Magistrate and the Sub Judge after office hours, indicates the surreptitious nature of the conduct of the police. The Executive Magistrate and the Sub-judge do not at all seem to have been concerned that the person whom they were remanding to custody had not been produced before them. They acted in a very casual way and we consider it a great pity that they acted without any sense of responsibility or genuine concern for the liberty of the subject. The police officers, of course, acted deliberately and mala fide and the Magistrate and the Sub Judge aided them either by colluding with them or by their casual attitude. We do not have any doubt that Shri Bhim Singh was not produced either before the Magistrate on 11th or before the Sub Judge on 13th, though he was arrested in the early hours of the morning of 10th. There certainly was a gross violation of Shri Bhim Singh's constitutional rights under Articles 21 and 22(2). Earlier we referred to the circumstance that though Shri Khajuria, Inspector General of Police stated that information was sent to Superintendent of Police, Anantnag through the Police Control Room, Srinagar on 10th September, 1985, Shri Mir, the Superintendent of Police, Anantnag stated that on 9th September, 1985 at 11.30 P.M. he was informed by the Police Control Room, Srinagar that Shri Bhim Singh was required to be apprehended as he was wanted in a case registered u/s 153-A of the Ranbir Penal Code. Nobody cared to explain why it was thought that Bhim Singh

would pass through Qazi Kund in Anantnag District on the night of September 9-10. Nobody thought fit to explain how and why the Senior Superintendent of Police, Udhampur came to direct his officers to escort Bhim Singh. It has not been explained how and when the Senior Superintendent of Police, Udhampur came to know of the arrest of Bhim Singh and who required him to arrange for the "safe passage" of Bhim Singh through Udhampur District. To our minds, it appears as if it was expected that Bhim Singh would proceed from Jammu to Srinagar on the intervening night of 9-10 September, 1985 as there was a meeting of the Assembly on 11th September and the police were alerted to arrest him when sighted en route to Srinagar and take him back to prevent him from proceeding to Srinagar to attend the session of the Legislative Assembly. We can only say that the Police Officers acted in a most high-handed way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals ! Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions, in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs otherwise is now established by the decisions of this court in 276278 and Sebastian M. Hongray v. Union of India AIR1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this court and paid to Shri Bhim Singh.