

Kaushalya Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-10-1998

Judge : N.K. Sinha and P.K. Sarin, JJ.

Appeal No. : Criminal W.J.C. No. 267 of 1998

Appellant : Kaushalya Devi

Respondent : The State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : 1. This writ petition for habeas corpus has been filed by the petitioner for production of his son, Suraj Bhan Singh, on account of illegal detention by the Police. 2. It is alleged that the petitioner's son, Suraj Bhan Singh, has been detained by the Police as Lallan Jha son of Shibu Jha with ulterior motive to kill him. However, in supplementary affidavit it has been stated that the petitioner's son, Suraj Bhan Singh, himself has given out his name as Lallan Jha when he was arrested by Polic

Judgement :

1. This writ petition for habeas corpus has been filed by the petitioner for production of his son, Suraj Bhan Singh, on account of illegal detention by the Police.

2. It is alleged that the petitioner's son, Suraj Bhan Singh, has been detained by the Police as Lallan Jha son of Shibu Jha with ulterior motive to kill him. However, in supplementary affidavit it has been stated that the petitioner's son, Suraj Bhan Singh, himself has given out his name as Lallan Jha when he was arrested by Police on 10.5.1998 in Laheri P.S. 61 of 1998 under Section 420 of the Indian Penal Code and Section 11 of the Gambling Act. It is alleged that the petitioner's son gave false name as Lallan Jha on account of apprehension that on disclosure of correct name he would be liquidated. According to the averments made in the supplementary affidavit it is borne out that the petitioner's son is being detained in Judicial Custody not only in the said Laheri P.S. Case No. 61 of 1998 but also in Mokamah (Patna) P.S Case No. 94 of 1997. Apart from the said case production warrant in respect of other case from Begusarai is also said to have been issued. In these circumstances, there remains no case now that the petitioner's son is being held in custody illegally without any authority. Consequently, no case is made out for issuance of writ in the nature of habeas corpus. In supplementary affidavit the petitioner has expressed apprehension that her son, Suraj Bhan Singh, may be killed by Police by showing fake encounter while taking him from jail to Court. It is further alleged that petitioner's son has great apprehension on his life at the hands of another criminal Sanjay Singh who was also detained in Jail at Barh where the petitioner's son was detained. It is further alleged that many politicians are also against petitioner's son and the U.P Police is also after him and the petitioner's son apprehends that he may be liquidated by Police, at the instance of his rivals and politicians, who are against him, apart from the U.P. Police. The petitioner seeks protection of the life of her son and prays that proper protection be provided to the petitioner's son while taking out from the Jail. Another allegation is made that petitioner's son is sought to be taken by Police on Police remand in connection with murder of Sri Brij Bihari Prasad, former Minister and M.L.A. of Bihar, only in order to kill him by showing fake encounter as the petitioner's son was not named as an accused in the first information report lodged for the murder of Sri Brij Bihari Prasad.

3. In the counter-affidavit the allegations of illegal detention and apprehension to the life of petitioner's son have been denied. A list of cases has been given in the counter affidavit which shows that the petitioner is said to be involved in fourteen

cases which include offences of murder, attempt to murder, extortion and other offences. He has been stated to be a dreaded criminal.

4. As regards apprehension at Barh Jail at the hands of another accused Sanjay Singh detained in the said Jail that cannot be said to be existing now as according to another averment of the petitioner her son has been transferred to Beur Jai, Patna. The learned Counsel for the petitioner has contended that the Police is trying to take petitioner's son on remand as such the authorities may be directed to follow the directions issued by the Apex Court in the case of D.K. Basu v. State of West

Bengal : 1997 CriLJ743 . It is contended that the petitioner's son should be ordered to be medically examined while taking him out from Jail and his relation may be permitted to be present where he may be detained by the Police for interrogation and that he should be allowed to consult his lawyer at the time of interrogation and that safe-guards be provided for the protection of the life of the petitioner's son.

5. The learned Counsel for the petitioner has referred to the observation of the Apex Court in the case of S.M.D. Kiran Pasha v. Govt of Andhra

Pradesh : (1990)1SCC328 , in support of his contention that the protection may be sought in respect of fundamental right guaranteed under Article 21 of the Constitution of India if there be threatened or imminent violation and the writ petition would be maintainable in that situation.

6. In the case of S.M.B.D. Kiran Pasha v Govt. of Andhra Pradesh (supra) the Apex Court has observed that for enforcement of one's life and personal liberty guaranteed under Article 21 if threatened to be violated or its violation is imminent the Court can protect observance of his right of restraining those who threatened to violate it. It is observed that if overt acts towards knowledge of the person threatened with that violation and he approaches the Courts under Article 226 giving sufficient particulars of proximate action as would imminently lead to violation of right, the Court should call upon those alleged to have taken those steps to appear and show cause as to why they should not be restrained from

violating that right. In the present case, Suraj Bhan Singh, who apprehends violation of his right under Article 21 of the Constitution of India, has not approached this Court. The present petition has been filed by his mother for issuance of writ of habeas corpus and subsequently by way of supplementary affidavit new averments for seeking protection of petitioner's son have been made. The petitioner's son has not been given on Police remand as yet by the Court although Police has moved an application for the same in connection with the case relating to the murder of Sri Brij Bihari Prasad. Merely because Police is seeking to take petitioner's son on Police remand it cannot be said that the petitioner's son's right under Article 21 of the Constitution of India is threatened to be violated. If the Police remand is to be given it shall be by virtue of the power conferred in the criminal Court and taking an accused on Police remand under orders of Court cannot be said to be a threat to the violation of the right of an accused guaranteed under Article 21 of the Constitution of India. As regards apprehensions at the hands of politicians and others, the allegations are only vague and do not give particulars of any overt act at the instance of such politicians or other persons. The learned Counsel for the petitioner has contended that even a prisoner has got a right for protection of his life as has been held by the Apex Court in the case of *Charles Gurumukh Sobhraj v. Delhi Administration* A.I.R. 1978 SC 1675. There cannot be any dispute on the said proposition that every person including a prisoner is entitled to protection of his life as guaranteed under Article 21 of the Constitution of India and the authorities and the State are duty bound to protect life of even prisoner while he is undergoing imprisonment. Failure to give adequate protection may well amount to failure to perform its constitutional as well as statutory obligations. The State has to act impartially and carry out its legal obligation to safeguard the life, health and well being of the people residing in the State without being inhibited by local politics.

7. In *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416 1997 (2) PLJR (SC) 116 the Apex Court considered the question of custodial violence, torture, rape and death in Police custody with reference to the right guaranteed under Article 21 of the Constitution of India. The Apex Court considered the entire matter and in order to check the abuse of the Police power, transparency of action and accountability issued following directions regarding the requirements to be

followed in all cases of arrest or detention

(1) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such Police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest of the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of the arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the name and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be signed

both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State, or Union Territory concerned. Director, Health Services, should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice Board.

It has been further observed that failure to comply with the requirements would render the official concerned liable to be punished for contempt of Court. The said directions were required to be given exhaustive publicity by broadcasting it on All India Radio besides being shown on national network of Door Darshan and by publishing and distributing pamphlets in the local language containing the said requirements for information of the general public. It has also been observed in the said case that it is true that in case of too much of emphasis on protection of fundamental rights and human rights of hardened criminals such criminals may go scot free without exposing any element or iota of criminality with the result the crime would go unpunished and in the ultimate analysis the society would suffer. Apex Court observed that the concern is genuine and the problem is real and to deal with such a situation a balanced approach is needed to meet the ends of justice. This is all the more so in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book

those who are involved in the crime.

8. The apprehension of the petitioner that the directions issued by the Apex Court in the case of *D.K. Basu v. State of West Bengal* (supra) would not be followed by the authorities appears to be misfounded. The direction has been given by the Apex Court to be followed by every Police Officer arresting or detaining an accused with specific warning that if it is not followed it will render the concerned officials to punishment for contempt of Court. There appears to be no reason to presume that the authorities would not follow the directions given by the Apex Court in the said case. The said directions have to be strictly followed as has been emphasised by the Apex Court. However no further direction is required to be issued by this Court in that regard.

9. The contention about medical examination of the petitioner's son providing adequate protection while taking the petitioner's son from jail custody for any court is a matter which may be dealt with the concerned criminal Court. If the petitioner's son has any grievance in that regard he himself may bring it to the notice of the concerned Court. No general direction in that regard is required to be issued in this case. As regards non-compliance of the production warrant issued by the Begusarai Court there is no necessity for issuing any direction in this case as that is a matter between the Court issuing the production warrant and the authority concerned when the production warrant is issued. It may be observed here that if an accused is involved in number of cases at different places and all Courts issue production warrant the accused cannot be made to suffer the harassment of taking him to every Court from one district to another district every now and then in compliance with the production warrant. When petitioner apprehends danger to the life of her son on being taken out from jail we fail to understand as to how petitioner is aggrieved if the petitioner is not being taken out from the jail for being production at Begusarai or any other place. In any case that is the matter which the concerned Courts are competent to deal with. We could have dismissed the writ petition outright when averment was made that the petitioner's son is in judicial custody as the writ of habeas corpus would not have been maintainable where any accused is under lawful detention but as certain averments were made in the supplementary affidavits and the learned Counsel for the petitioner raised

contention with reference to such averments we have dealt with it.

10. Considering the entire facts and circumstances of the case the writ petition is dismissed.

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