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SMT. HARBANS KAUR

v.

UNION OF INDIA AND ORS.

DECEMBER 16, 1994

B

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

*Constitution of India, 1950: Article 32*

C *Habeas Corpus—Petitioner alleging illegal detention, torture and harassment of her sons by police—Allegation of Custodial death of one son—Directions by Supreme Court—Enquiry into alleged illegal detention and custodial death.*

D The petitioner filed a writ of habeas corpus in this Court praying for directions to Director General of Police, Punjab to produce her sons SP and SS as well as an inquiry into the cause of death of her other son G who died in police custody. The case of the petitioner was that her sons SP and SS were picked up by police on 3.4.94 and 5.4.94 respectively. They were not only kept in unlawful police custody for a long time but were also tortured and harassed. As regards G, her case was that he was taken to police custody on 27.4.94 and was mercilessly beaten and when his condition became very critical, the police got him admitted in hospital where he was declared dead. The petitioner further stated that against illegal detention of her sons, she represented through various telegrams and letters to Director General of Police and various other authorities and since she did not receive any reply she filed a writ of habeas corpus. However, subsequent to the filing of the writ petition, SP and SS were produced before the Judicial Magistrate at Ludhiana on 22.6.94 who remanded them to judicial custody.

G

The respondents admitted that SP and SS were arrested in connection with investigation of a criminal case but denied the allegation that G was arrested by police.

H

Adjourning the matter, this Court

HELD:1. Since SP and SS have been produced before the Magistrate who has remanded them to judicial custody, no writ of habeas corpus need be issued in respect of them. [646 H]

2. So far as G is concerned, the unfortunate fact is that he has died in a hospital. According to the hospital records, his body was handed over to his wife. It also appears from the hospital record that at the time of admission, nephew of G gave written consent on behalf of G to undergo the treatment and operation in the hospital. Since G has died no question arises for issue of a writ of habeas corpus in his case. A

[646 H, 647 A to B] B

3. However, very disturbing facts have been brought to the notice of the Court concerning life and liberty of petitioner's sons. Petitioner had been complaining about the illegal detention of her three sons for a long time. In the facts of this case, it is difficult to assume that the letters and the telegrams that were sent by the petitioner, were without any basis. Therefore, in the interest of justice, this case should be investigated by the Director General of Police, Punjab. He is directed to make an enquiry as to exactly when SP and SS were taken into police custody and enquiry should also be made as to when if at all, G was taken into police custody and whether he was mercilessly beaten in police custody which, ultimately, led to his death. He is further directed to submit a report to this Court within eight weeks from the date of this order. [647 D to F] C

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl.) 203 of 1994. D

(Under Article 32 of the Constitution of India.) E

R.P. Kathuria, Nag Pandey and K.K. Gupta for the Petitioner.

R.S. Suri for the Respondent.

The Judgment of the Court was delivered by F

SEN, J. This is a habeas corpus petition filed by Smt. Harbans Kaur. The Petitioner Prays for a direction upon the Director General of Police, State of Punjab, and other respondents, to produce the petitioner's sons Surinder Pal Singh and Sarvjeet Singh. There is also a prayer for an order directing inquiry into the cause of death of Gurbax Singh. The allegation is that Gurbax Singh was in police custody from 3rd April, 1994 till date of G his death.

It has been alleged in the petition that Surinder Pal Singh, Gurbax Singh, Sarvjeet Singh and Manjit Singh, the sons of the petitioner, were married and were living with their families at 1619/2, Durgapuri, Habowal, Kalan, Ludhiana, Punjab, along with their mother, the petitioner herein. H

A On 3.4.1994 Surinder Pal Singh was called to the police post through a constable. Since then his whereabouts were not known and it was alleged that he was kept in unlawful custody of police and had not been produced before any Magistrate. The petitioner made representation to the Director General of Police and various other important persons of the State, but to no avail.

B It has been alleged that on 27.4.1994 one constable came to the house of the petitioner and asked for Gurbax Singh. The Constable stated that if Gurbax Singh appeared before SI Surjit Chand Sharma, then Surinder Pal Singh would be released from police custody.

C On 24th June, 1994, Sarvjit and Manjit applied for anticipatory bail in the court of Additional Sessions Judge, Ludhiana, and an interim order was passed. The case was adjourned till 29.6.1994.

D It has been further alleged that on 5.6.1994 the third son of the petitioner Sarveet Singh was picked up by SI Surjit Chand Sharma. He was also not produced before the court.

E It has also been alleged that Gurbax Singh was taken to the police custody on 27.4.1994 and was mercilessly beaten. When his condition became very critical, the police got him admitted in the Hospital D.M.C., Ludhiana, on 9th June, 1994. On 12th June, 1994 he was declared dead. It was the contention of the petitioner that none of the three sons of the petitioner were ever produced before the court.

F In the affidavit filed on behalf of the respondent, it has been stated that on 4.4.1994 and F.I.R. was filed in which allegations were made that five persons, namely, Gurbax Singh, Surinder Pal Singh, Sarveet Singh, Manjit Singh and Puran Singh, had committed offences under the provisions of Sections 420/408/468/471/148 and 411 of Indian Penal Code. The First four persons were the sons of the writ petitioner and the fifth person was a truck driver. After preliminary inquiries, Surinder Pal and Sarveet Singh were arrested on 23rd June, 1994 and were produced before the local Magistrate on 24.6.1994. The Judicial Magistrate remanded them to judicial custody at Central Jail, Ludhiana, where both the accused are now lodged. Puran Singh was arrested subsequently on 8.7.1994 from Karnal. In his case, remand to police custody was ordered till 13.7.1994. Manjit Singh was avoiding police and hence could not be interrogated.

G There is a controversy about the date when Surinder Pal Singh and H Sarveet Singh were taken into police custody. The writ petitioner as early

as on 9.6.1994 and 13th June, 1994 had sent telegrams and letters to various authorities about the unlawful detention of her three sons, Surinder Pal Singh, Gurbax Singh and Sarvjeet Singh, in P.P.Ghumar Mandi, P.S.Division No.5, Ludhiana.

Since the telegrams and letters had no effect, this habeas corpus petition was filed. Thereafter, Surinder Pal and Sarvjeet were produced before the Judicial Magistrate, First Class, Ludhiana, on 29.6.94 and were remanded to judicial custody at Central Jail of Ludhiana. Therefore, the habeas corpus petition in the case of Surinder Pal Singh and Sarvjeet Singh has now become infructuous.

The only question that remains for consideration is the case of Gurbax Singh. According to the respondents, Gurbax Singh had not been arrested or interrogated or taken into police custody in any manner at all. Gurbax died of heat stroke in hospital. The records produced by Dayanand Medical College and Hospital, Ludhiana, Reveal that Gurbax Singh was admitted to the hospital on 10th June, 1994 at 5.40 P.M., suffering from high fever; the diagnosis was that he was suffering from heat stroke, coma and shock. He died in the hospital at 5.32 P.M. on 14th June, 1994. According to the hospital record, the body was handed over to his wife, Rajinder Kaur. It also appears from the hospital record that at the time of admission, Ajay Paul Singh, nephew of Gurbax Singh, gave written consent on behalf of Gurbax Singh, to undergo the treatment in the hospital and also to undergo investigations, anesthesia or operation, as advised by the physician/ Surgeon.

As against this, it has to be borne in mind that the writ petitioner had appealed to various authorities, including D.G.police, by telegram complaining about the unlawful detention of her sons Surinder, Gurbax and Sarvjeet. This telegram was sent on 9.6.94. This was followed up by a letter dated 13th June, 1994, in which it was alleged:—

“..... my sons are in unlawful custody of the police and they are trying to show them as absconders..... Gurbax Singh was taken in a general hospital by a constable and the police has obtained signatures of the wife of Gurbax Singh to cover their mischief and to prove innocence. Gurbax Singh is almost at death bed and he may die at any moment.”

This habeas corpus petition was affirmed on 16th June, 1994. An affidavit of urgency verified on 22nd June, 1994 was filed in this Court expressing apprehension :—

A "That the one son of the deponent i.e. Shri Gurubaksh Singh was murdered in police custody on 12.6.1994. The remaining two sons of deponent are in unlawful custody and their whereabouts and welfare are not known till date. The deponent is under apprehension that they will also be killed if the matter is not listed immediately.

B 4. That the remaining two sons of the deponent i.e. Surinder Pal Singh and Sarvjit Singh were picked up by the police on 3.4.94 and 5.4.94. Since then they are tortured and harassed by the police."

C Various allegations have also been made in the writ petition against the police officials. It has been stated that Gurbax Singh was taken into custody on 27.4.1994. He was mercilessly beaten. He was in police custody on 12th June, 1994. He was unconscious and his condition was very critical when he was admitted in the hospital on 10th June, 1994. In the F.I.R. filed on 4.4.1994 all the four sons of the petitioner Gurbax Singh, Surinder Pal Singh, Sarveet Singh and Manjit Singh were named. It has been stated by the respondent on affidavit that Manjit Singh was avoiding the police. No such allegation was made against the Gurbax Singh. The allegation that Gurbax Singh had been arrested by police has been denied. Surinder Pal Singh and Sarveet Singh were produced before the Judicial Magistrate First Class, Ludhiana on 29.6.94. This was after the death of Gurbax Singh.

E The petitioner has prayed for inquiry into the cause of death of Gurbax Singh. Although Gurbax was named in the F.I.R., the respondents have not stated in the affidavit anything about him. It has been admitted that Surinder Pal and Sarveet were arrested, Manjit Singh was avoiding police. It is not the case of the respondents that Gurbax was also evading arrest.

F The allegation that has been made by the petitioner on the facts that have been brought on the record of this Court, is that the police investigation causes great concern. The mother of Gurbax Singh had been complaining about the illegal detention of her three sons for a long time. She did not receive any reply to her letters from any quarters. It was only when she filed a habeas corpus petition, Surinder Pal and Sarveet were produced before the Judicial Magistrate at Ludhiana on 29.6.1994. There are conflicting allegations about the cause of the death of Gurbax Singh. However, now that Surinder Pal and Sarveet have been produced before the Magistrate and the Magistrate has remanded them to judicial custody, no writ of habeas corpus need be issued in respect of them. So far as Gurbax Singh is concerned, the unfortunate facts that he has died in a

hospital. Therefore, no question arises for issue of a writ of habeas corpus A in his case.

There is, however, one aspect of the case which causes concern. The writ petitioner had expressed great anxiety about her sons and had sent telegrams and letters to various authorities on 9.6.1994 and 13.6.1994. Her complaint was that her three sons Surinder Pal, Gurbax and Sarvejot had been taken into police custody. The habeas corpus petition was affirmed on 16th June, 1994. An affidavit of urgency was verified on 22nd June, 1994. It was only after the habeas corpus petition was filed in this Court, that Surinder Pal and Sarvejot were produced before the Local Magistrate of Ludhiana on 24th June, 1994. In the facts of this case, it is difficult to assume that the letters and the telegrams, that were sent by the petitioner, were without any basis. Now that Gurbax Singh has died and Surinder Pal Singh and Sarvejot Singh have been produced before the Magistrate, no writ of habeas corpus can be issued. But, very disturbing facts have been brought to the notice of the Court concerning life and liberty of her sons. On behalf of the writ petitioner, a prayer has been made that an enquiry should be made as to the cause of the death of Gurbax Singh and also whether Surinder Pal and Sarvejot were detained in police custody for about a fortnight before they were produced before a Magistrate. B C D

In the interest of justice, this case should be investigated by the Director General of Police, Punjab. The Director General of Police is directed to make an enquiry as to exactly when Surinder Pal Singh and Sarvejot Singh were taken into police custody and enquiry should also be made as to when, if at all, Gurbax Singh was taken into police custody and whether he was mercilessly beaten in police custody which, ultimately, led to his death. The Director General of Police is directed to give a report to this court within a period of eight weeks from date. E F

The writ petition, therefore, is adjourned for ten weeks.

T.N.A