2026:AHC:196414-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 1222 of 2026

Kamlesh Kumar (Corpus) And Another

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Satyam Srivastava
Counsel for Respondent(s)	:	G.A.

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.
HON'BLE ACHAL SACHDEV, J.

1. Present petition has been filed by the petitioner, who alleges illegal detention by the respondent-State from 15.08.2026 onwards. In the petition, it was alleged that the petitioner was unlawfully lifted by two armed police men from his shop on 15.08.2026 (the reference to the VC footage has already been made in the previous order passed by this Court on 03.09.2026). On that date, this Court had called for the personal affidavit of the Superintendent of Police of the District. Pursuant thereto, affidavits of Deputy Commissioner of Police, Yamuna Nagar, Commissionerate, Prayagraj and S.H.O. Police Station Meja, District Prayagraj, have been filed, which are taken on record.

2. Having gone through the affidavit of the Deputy Commissioner of Police, with specific reference to paragraph-6 of the affidavit, it has been recorded therein that the petitioner has a property dispute with his neighbour Geeta Vishwas, who levelled a serious allegation against him of being a citizen of Bangladesh and filed a police complaint against the petitioner. The inquiry was conducted by the Assistant Commissioner of Police, Meja, Commissionerate Prayagraj. Upon the conclusion of which, Case Crime No. 429 of 2026 was registered under Sections 318(4), 336(3), 338, 340(2), 351(3) of BNS,

Sections 21 and 22 of the Immigration and Foreigners Act, 2025 and Section 12 of the Passport Act, 1967 at P.S. Meja, District Prayagraj. An inquiry that was conducted into the allegations made by Geeta Vishwas relating to the nationality of the petitioner by the Assistant Commissioner of Police (Intelligence), Commissionerate Prayagraj alleges that the petitioner is actually a resident of Maispada, Police Station Nadai, District Nadai, Bangladesh and his temporary address is Barbariya Kushwadia, Police Station Nadia, West Bengal. The inquiry report is dated 27.06.2026.

3. This Court desists from reflecting anything on merits of the case and is restricting itself exclusively to the allegation of unlawful detention/custody of the petitioner from 15.08.2026 onwards. In this regard, in paragraph-8 of the affidavit of the Deputy Commissioner, it is averred that in the inquiry conducted, the deponent arrived at the conclusion from the records and the CCTV footages that the petitioner was taken from his medical shop in Sonar Tara by the police of Police Station Meja on 15.08.2026 and sent to jail on 19.08.2026. It is further recorded that no satisfactory reply has been given by Mr. Nitendra Shukla, S.H.O. of Police Station Meja and the Investigating Officer/Additional Inspector Mr. Kamlesh Yadav regarding the detention of Kamlesh Kumar Vishwas on 15.08.2026 in this manner. It is further averred that both these officers mentioned hereinabove have committed gross negligence towards the duties and a copy of the inquiry report dated 17.09.2026 is also annexed to the affidavit as annexure-2. In paragraph-9, the deponent has informed the Court that in view of the negligence shown by the aforementioned officers of the said police station, they have been suspended vide order dated 17.09.2026 under Rule 17(1)(A) of the Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991.

4. As regards the affidavit of the S.H.O., the S.H.O. has stated that he was aware that the petitioner had some Bangladeshi connections and an inquiry, in this regard, was conducted by the A.C.P. Meja. However, he says that 15th of August being Independence Day, the deponent was taking precautions and had instructed Constable Aditya and Constable Sahil to ask the petitioner to report at the police station on 15.08.2026. It is the case of the S.H.O. that the constables misunderstood the message and instead of intimating him to report at the police station, asked him to accompany them to the police station. In paragraph-9, the S.H.O. states that at around 4.00 pm, on 15.08.2026, information was received at Police Station Meja with regard to the firing incident which had taken place in the locality and the deponent immediately left the police station and proceeded to the S.R.N. Hospital Prayagraj for admitting the injured persons, and that the distance between Police Station Meja and S.R.N. Hospital is about 60 K.M. Copy of the first information report lodged as Case Crime No. 428 of 2026 on 16.08.2026, has been annexed as annexure-2 to the affidavit. Thereafter, the deponent (S.H.O.) states that he was at S.R.N. Hospital Prayagraj till early morning hours of 16.08.2026 and in the meantime, on 16.08.2026, the inquiry report along with the instructions of the D.C.P. Yamunanagar to lodge an F.I.R. against the petitioner reached the police station. On the basis of which, the F.I.R., which has already been referred hereinabove, was registered on 16.08.2026. Therefore, there is a clear cut admission on the part of the police with regard to the illegal detention of the petitioner for more than 24 hours. Thereafter, he was only produced before the Magistrate on 19.08.2026 and sent to judicial remand by the Court of A.C.J.M-10, Prayagraj.

5. It is also averred in the affidavit of the S.H.O. that the petitioner was shown to be arrested on 19.08.2026, while the report of the Assistant Commissioner of Police also reflects very clearly that he

was in the custody of the police from 15.08.2026 itself. In view of the above, this Court unhesitatingly holds that the petitioner was held in illegal custody from 15.08.2026 till he was produced before the Magistrate and sent to judicial remand on 19.08.2026.

6. Thus, this Court holds the continued incarceration of the petitioner as an unlawful custody and directs that he be released forthwith from custody, if not wanted in any other case. However, this order does not preclude the State where it finds the necessity to arrest the petitioner to follow the procedure established by law, if he needs to be taken in the custody. Since, there is a criminal case pending against the petitioner, the petitioner would be required to attend the police station and join investigation, as and when required by the police, upon notice being issued to him under the B.N.S.S.

7. In addition thereto, by way of compensation, this Court directs the State to pay the petitioner Rs. 50,000/- as compensation for illegal detention to be recovered from such persons that the State finds responsible in this case, after due inquiry.

8. However, before parting with the case, this Court wishes to record its appreciation for the candour with which Mr. Vivek Chandra Yadav, Deputy Commissioner of Police has disclosed unequivocally in his affidavit without trying to beat around the bush and accepting the error on the part of the police without any ambiguity. The courage of the said officer is appreciated by this Court in accepting that error and the same be placed in his service record. As regards the S.H.O., the S.H.O. has also given a true disclosure and the Court appreciates the acceptance of the error on the part of the S.H.O also. However, on account of their lack of vigilance where malice is missing, but resulted in an individual being incarcerated without being given the protection of the procedure established by law for five days. The Court hopes that the police would take cognizance and carry out corrective

measures in future, so that such incidents may not happen, while the requirement of an accused in the investigative process is also fulfilled and his constitutional rights are also taken into cognizance. At page-15 of the personal affidavit of the Deputy Commissioner of Police, is the suspension order of the S.H.O. in this case. This Court has observed that it was an unfortunate chain of events that commences from the Independence Day celebrations, where the S.H.O. himself, undoubtedly was involved in ensuring the law and order in his jurisdiction and no malice is evident on his part in deliberately keeping the petitioner in illegal custody for nearly five days. This Court hopes that the same may be taken into consideration by the authorities in the course of his departmental inquiry.

9. However, the State while fixing responsibility for the unlawful detention of the petitioner, shall be guided by the material on record, which arises from the inquiry to be carried out by it, uninfluenced by the observations in this order, with regard to the apportionment of recovery of the compensation amount. The compensation shall be paid forthwith and recovered as per the disciplinary inquiry conducted by the State within three months from the date of this order.

10. With the above, the petition stands **disposed of**.

September 18, 2026
Noman

(Achal Sachdev,J.) **(Atul Sreedharan,J.)**

Digitally signed by :-
NOMAN AHMAD
High Court of Judicature at Allahabad