

CRWP No.11962 of 2023



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137+297

CRM-W No.1789 of 2023 in/and
CRWP No.11962 of 2023

DAGGAR MALHOTRA VS STATE OF HARYANA AND OTHERS

Present: Mr. Amitabh Tewari, Advocate with
Mr. Siddhant Saroha, Advocate
Mr. Angad Pahel, Advocate
Mr. Ishan Puri, Advocate
Mr. Ishan Puri, Advocate
for the petitioner.

Mr. Krishan K. Chahal, Addl. A.G., Haryana with
Mr. Viney Phogat, D.A.G., Haryana.

Mr. Avinit Avasthi, Advocate
for respondent No.2 & 3/complainant.

[1]. By way of present petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C, prayer has been made for issuance of writ of Habeas Corpus directing respondent No.1 to 3 for ensuring release of detainees as mentioned in para no.2 of the petition namely, Mrigank Malhotra and Mrs. Gunjan Malhotra, who are allegedly in illegal detention of respondent No.1. From the records, it can be found that the petition was presented before the Registry of this Court at 9.30 P.M. on 09.12.2023 and was put up before this Court at 5.30 A.M. on 10.12.2023.

[2]. On 10.12.2023, when the matter was taken up, following order was passed by this Court at 6.15 A.M.:-

“By way of present petition, prayer has been made for issuance of a writ in the nature of habeas corpus with a further direction to respondent No.1 for ensuring release of detainee i.e. Mrigank Malhotra and Gunjan Malhotra. It has been contended on behalf of the petitioner that the cause in the present petition is in continuation of the previous petition filed at the instance of detainee (CRM-M-61772/2023), which is pending for 15-12-2023. Ld.

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Counsel further contends that so far copy of the FIR has not been provided to the petitioner and the detenue have been illegally picked up just with a motive to pressurize them to enter into settlement with private persons in a dispute arising inter se business transaction without even issuance of any notice U/s 41-A Cr.P.C. He also points out that previously 4 different notices, asking for different information from the detenue were served by resp.No.1 (Ambala Police) which were duly replied, yet resp. No.1 always intended and by to compel the detenue to enter into settlement with pvt. respondents by putting pressure of registration of FIR against them and involving in criminal prosecution. He also points out that detention of the aforementioned detenue is wholly with the motive to frustrate the filing of previous petition which was sub-judice, wherein State was put to advance notice followed by its appearance.

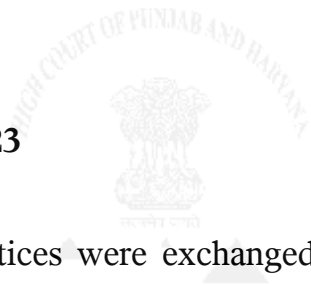
Notice of motion for 11-12-2023.

Meanwhile, W.O. Be appointed, who shall visit the place(s) where detenues are alleged to be detained illegally and get them released if they are found to be in illegal custody and produce them before this Court, and shall submit his report before the date fixed.”

[3]. Today, a report from the Warrant Officer has been received in Court, which has been opened and made part of the paper book.

[4]. Briefly stating, on account of some business related dispute between the Company run by the detenues and the complainant, besides threat perception having been extended to the life of the complainant, a complaint dated 30.10.2023 was received in the office of Superintendent of Police, Ambala City. The same was immediately forwarded to the Economic Offences Wing of District Ambala (for short 'the EOW') followed by issuance of notices by the EOW Ambala to the M/s KLB Komaki Pvt. Ltd. i.e. Company being run by both the detenues.

[5]. In pursuance thereof, a detailed reply was sent to the EOW, Ambala through email dated 02.11.2023 by the petitioner. Thereafter, certain

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correspondence/legal notices were exchanged between the parties. Finally, a report from the office of EOW Ambala was received by Police Station, Sector 9 Ambala City on 07.12.2023 at 5.30 P.M. (as per statement made by ASI Ramesh Kumar, who is present in Court and has been identified by Mr. Krishan K. Chahal, Addl. A.G., Haryana).

[6]. In pursuance thereof, FIR No.0279 dated 07.12.2023 under Sections 406, 420, 506 IPC was registered at Police Station Sector 9, Ambala City against Subhash @ Mrigank Malhotra, at the instance of respondent No.2 being complainant. The translated version of the said FIR has been provided to the Court by the learned counsel representing the petitioner, which is reproduced hereunder so as to refer the allegations leveled therein:-

“FIR 279 of 2023 lodged at PS Sector-9 Ambala

Dated-07.12.2023

12. First Information contents: Duplicate complaint is as follows that complaint number is 314-A/CITY dated 31.10.2023, Balbir Singh son of Kartar Singh resident of Kothi number 3 sector-7 police station sector-9 Ambala city district Ambala after investigation by EOW CELL with report and after approval by Superintendent of Police It has been received from the office of Ambala City at Bajaria Post Bana, the letter of which is as follows: To, Mr. Superintendent of Police, Ambala City. Subject: Complaint regarding 3 people cheating me of Rs 2 crore 26 lakh or some gangsters threatening to kill me. Sir, 1. That Supermax Energies Pvt Ltd is a company in which some of my salesmen work. In Delhi theres a company called KLB Komaki Pvt Ltd which is owned by one Subhash, his mother and his wife who three have with deliberate intention sought to defraud and these three have swindled crores of rupees from 4-5 other people also. These three hatched a conspiracy and misled me and my salesmen through talks and defrauded us of Rs. 2 Crore and 26 Lakhs. For this they gave us some cheques. When I inquired about these people from people around Delhi, they all told that these three have this business, they have made promises of

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crores of rupees to many people, all three of them have defrauded multiple people. That these three people are also in contact with some gangsters and goons and if I asked to recover the money they threatened me with my life. We called them many times but they said they will get us killed by the gangsters and goons. They clearly say that we will not give you even a single rupee, you can take whatever action is necessary and they also say that they will kill you from our top police officers or ministers. Know that you cannot harm us. 3. That these three have defrauded our company to the tune of Rs 2 crore 26 lakhs, appropriate and strictest action should be taken against them and security should be provided to me and my family. I request you to get our payment of Rs 2 crore 26 lakh returned from them. It will be so kind of you. sd-Balbir Singh son of Kartar Singh resident of Kothi number 3 sector-7 police station sector-9 Ambala city district Ambala City Mobile No. :-7800000063 Subhash: Mobile No. 9811024510 Address: KLB KOMAKI PVT LTD.R KI NO. 37/19/20/22, Opposite Om Logistics, Kapashera-110037 GSTIN/UIN 07AABCK81001D172 State Delhi Code07 Police Station Hasb Amda Complaint Case no. 279 dated 07.12.2023 Section 406,420,506 IIPC police station Sector-9 Ambala city registered and after registering the duplicate police documents along with the real complaint, the order of HSB manager officer is being sent to Bajaria post police post Sector-7 Ambala city for further investigation. A copy of the First Information Report will be sent to the service of the concerned officer of Bajaria Post. The managing officer was informed about the situation and the Indraaj Record Police Station was registered as per law. The first information report was chalked out in the presence of ASI Gurmej Singh 112 PS Sector- 9 Ambala city.

[7]. As per learned State counsel, Investigating Officer ASI Ramesh Kumar left for Delhi in furtherance of the investigation of the aforementioned FIR and arrested Subhash @ Mrigank Malhotra on 10.12.2023 at 3.00 A.M.

[8]. I have heard learned counsel for the parties and gone through the paper book. In the aforesaid circumstances, following moot questions would arise to be answered by this Court:-

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(i) Whether in the wake of allegations leveled in the FIR, strict compliance under Section 41-A Cr.P.C. was required to be carried out in consonance with the law laid down by the Hon'ble Apex Court in case of **'Satender Kumar Antil vs. Central Bureau of Investigation & Anr. 2022(10) SCC 51** decided on 11.07.2022;

(ii) Whether in the facts and circumstances of the present case actual and effective compliance of Section 41-A Cr.P.C. was made by the Investigating Officer, namely, ASI Ramesh Kumar?

(iii) In case there was non-compliance of Section 41-A Cr.P.C. by the Investigating Agency, what consequences need to follow.

[9]. With regard to point No.(i), as already stated hereinabove, a perusal of the FIR shows that the same was primarily recorded with the allegations of commercial dispute between the parties, though with vague allegations of threat to life of the complainant from certain top police officials or ministers (without giving any details or particulars of those police officers). In view thereof, in the offences under Sections 406, 420, 506 IPC, the maximum sentence being 7 years, the compliance of Section 41-A Cr.P.C. was mandatorily required to be followed in terms of **'Satender Kumar Antil's** case (supra). Even being deeply conscious of this fact and the legal proposition, the police file finds a notice under Section 41-A Cr.P.C., prepared by the investigating officer. Para Nos.19 & 21 of **'Satender Kumar Antil's** case (supra) are reproduced hereunder:-

“19. The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined under Article 21 and 22 of the Constitution of India. The provisions governing clearly exhibited the aforesaid intendment of the Parliament.

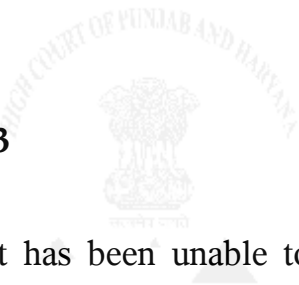
21. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment

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for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.”

[10]. As regards point No.(ii), which arises for the consideration is as to whether as per the police file, the investigating officer ASI Ramesh Kumar ever served any notice under Section 41-A Cr.P.C. to the alleged detainee i.e. Subhash @ Mrigank Malhotra in accordance with law. In this regard a perusal of the alleged notice under the signatures of ASI Ramesh Kumar which forms part of police file shows that the same was never meant to be served upon the alleged detainee i.e. Subhash @ Mrigank Malhotra. As per the stand taken by the respondent-State, the same was though offered to the detainee i.e. Subhash @ Mrigank Malhotra, who refused to receive the same. A perusal of the notice shows that the same does not bear signatures of any witness; neither it has been mentioned in the notice that whether any effort was made to serve this notice upon i.e. Subhash @ Mrigank Malhotra through any alternate mode nor any attempt to associate any independent witness was made or it could not be fructified on account of refusal by the independent person. Moreover, perusal of the police file shows that all previous notices upon the detainees were served by the EOW, either on the whatsapp mobile number of Subhash @ Mrigank Malhotra or on the e-mail address of M/s KLB Komaki Pvt. Ltd., and those were even

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responded to. This Court has been unable to comprehend that as to why such an important statutory requirement was never complied with through these means, in case of refusal by the accused. Nothing has come on record to suggest that any effort was ever made to comply with statutory requirement of Section 41-A Cr.P.C., either through affixation or postal means as mandated by **'Satender Kumar Antil's** case (supra). The manner in which the compliance of Section 41-A Cr.P.C. has been projected by respondent No.1 is evidently illegal and improbable.

[11]. As regards point No.(iii), in the wake of aforesaid discussion, once it has been recorded *prima facie* that notice under Section 41-A Cr.P.C. was never offered to or served upon the alleged detainee i.e. Subhash @ Mrigank Malhotra, in terms of directions issued by the Hon'ble Apex Court in para 73 of **'Satender Kumar Antil's** case (supra), the detention of said detainee becomes illegal and unjustified and accordingly, he is directed to be released forthwith on interim bail subject to his furnishing of adequate bail bonds/ surety bonds to the satisfaction of CJM/ Duty Magistrate/ Area Magistrate concerned. It may be noted here that as per the report submitted by the Warrant Officer and even as per the stand taken by the respondent State, the other alleged detainee, namely, Gunjan Malhotra, was never arrested.

[12]. With respect to the contention by learned State counsel that writ of habeas corpus is not maintainable in the present case, support can be drawn from the decision made by Hon'ble Apex Court in the case of **Arnab Manoranjan Goswami vs. The State of Maharashtra & Ors., 2021(2) SCC 427** wherein also vide an interim order dated 11.11.2020, in roving writ of a habeas corpus petition, direction to release the petitioner on interim bail was ordered by the Hon'ble Apex Court. Para No.9 of the said order is reproduced hereunder:-

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“9. On 16 April 2019, the SHO at Alibaug Police Station filed a report in the Court of the Chief Judicial Magistrate ("CJM") for an A' summary. The CJM passed an order accepting the report and granted an "A summary. The meaning and import of an "A" summary is reflected in Para 219 (3) of the Bombay Police Manual, 1959. An 'A' Summary indicates a case where an offence has been committed but it is undetected, in that there is no clue about the culprits or the property, or where the accused is known but there is no evidence to justify their being sent up to the Magistrate for trial. Para 219 (3) of the Bombay Police Manual reads thus:

"RULE 219 (3) OF BOMBAY POLICE MANUAL

(3) The final report should be written up carefully by the officers incharge of the Police Station personally and should be accompanied by all the case papers numbered and indexed methodically. If the accused has been released on bail, the Magistrate should be requested to cancel the bail bond. He should also be requested to pass orders regarding the disposal of property attached, unless any of the articles, e.g., blood stained clothes, are required for further use in true but undetected cases. A request should also be made to the Magistrate to classify the case and to issue an appropriate summary of his order, viz:-

"A" True. undetected (where there is no clue whatsoever about the culprits or property or where the accused in known but there is no evidence to justify his being sent up to the Magistrate (for trial).

"B" Maliciously false.

"C" Neither true nor false, e.g., due to mistake to fact or being of a civil nature.

"Non-cognizable" Police investigation reveals commission of only non-cognizable offence."

[13]. Equally important, relevant para no.73 of the judgment in case of **'Satender Kumar Antil's** case (supra) is reproduced hereunder for reference:-

“73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

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(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail

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conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

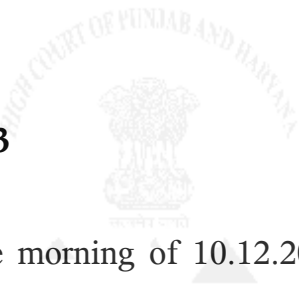
(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

(k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

(l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.”

[14]. It may be noted here that a contention has been raised on behalf respondent No.2/complainant to the effect that once the petitioner has already been detained against the FIR and is in police custody, the petition for Habeas Corpus does not lie. Reliance in this regard has been placed by learned counsel upon a decision dated 05.09.2018 passed in case of **State of Maharashtra & Ors. vs. Tasneem Rizwan Siddiquee'** in **Crl. Appeal No.1124 of 2018 (Arising out of SLP(Crl.) No.2846 of 2018.** In the humble opinion of this Court, the aforesaid proposition of law may not apply to the facts and circumstances of the present case, as there have been apparent and prima facie non-compliance of Section 41-A Cr.P.C. besides the specific directions issued by the Apex Court in **'Satender Kumar Antil's'** case (supra). Factual analysis of the present case reveals that present Habeas Corpus petition was filed on the night of the 09.12.2023 around 9:30 p.m., which was subsequently put up before the

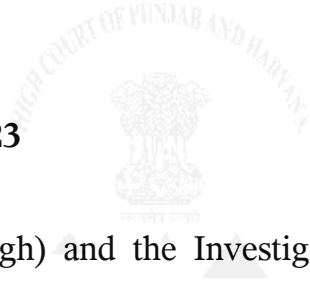
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Court on 5:30 a.m. in the morning of 10.12.2013 and order was passed thereupon, at around 6:15 a.m. However, petitioner was arrested on the intervening night of 9th and 10th so as to make the present petition infructuous but the conduct of the respondents speaks volume about their misdeeds. In case of refusal by the petitioner to sign the notice served him under 41-A Cr.P.C., it should have been served upon the detenues through an alternate mode or by pasting the same at some conspicuous place. Only when the directions specified therein were not followed by the petitioner, he would have been subjected to arrest, but merely non signing of the same could not have been a ground to arrest the petitioner. Even in the arrest memo prepared in compliance of section 41-B Cr.P.C., no reasons specifying the requirement for the arrest of the petitioner have been recorded which is in gross violation of not only section 41-A Cr.P.C., but also in contravention of guidelines issued in **'Satender Kumar Antil's** case (supra). Even learned magistrate while allowing the police custody in the present case, failed to take notice of these violations. Thus in this situation, this Court deems it appropriate to follow the law laid down by the Hon'ble Apex Court in case of **Gautam Navlakha vs. National Investigation Agency, 2021(3) R.C.R. (Criminal) 314.** Relevant para no.63 of the said judgment is reproduced hereunder:-

“63. Thus, we would hold as follows:

If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.”

[15]. Having said, that there is prima facie violation of the directions issued by the Apex Court in **'Satender Kumar Antil's** case (supra), resultantly, notice is being issued to Superintendent of Police, Ambala, SHO, Police Station, Sector 9, Ambala

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City (SHO Jatinder Singh) and the Investigating Officer ASI Ramesh Kumar for 12.12.2023 to show as to why contempt proceedings be not issued against them for having violated the directions issued in case of 'Satender Kumar Antil's case (supra). It is further directed that all the aforesaid three officer(s)/ Official(s) shall remain present in Court tomorrow i.e. on 12.12.2023 at 02.00 PM and file their response.

[16]. Though learned counsel for respondent No.2 has also agitated that on 30.10.2023, two threat calls were received by the complainant i.e. respondent No.2 from some foreign mobile number, followed by whatsapp message involving certain local goons by stating that the complainant would be eliminated by next Diwali. However at this stage, I am unable to find any substance in the aforesaid averments as no such allegations were ever made part of the FIR which was recorded after about 1½ month of receiving those alleged threats calls on 07.12.2023 and the same remains to be investigated so far as part of the investigation.

[17]. A copy of this order be given to the learned counsel for the parties under the signatures of Bench Secretary of this Court as per rules.

December 11, 2023

Atik

**(HARKESH MANUJA)
JUDGE**