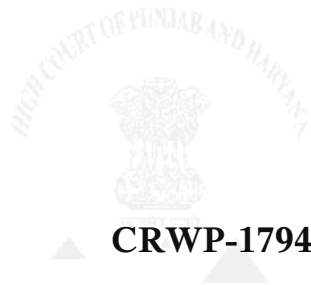


225



CRWP-1794-2024 (O&M)

DAVINDER SINGH
VERSUS
 STATE OF HARYANA AND OTHERS

Present: Mr. Ish Puneet Singh, Advocate
 for the petitioner.

Mr. Deepak Sabherwal, Additional Advocate General, Haryana
 for respondent Nos. 1 & 3.

Mr. Athar Ahmad, Deputy Advocate General, Punjab and
 Mr. Siddharath Sandhu, Assistant Advocate General, Punjab
 for respondent Nos. 2 & 4.

Ms. Deepali Verma, Advocate for
 Mr. Naveen S. Bhardwaj, Advocate
 for respondent No. 5.

Pursuant to the order dated 12.03.2024, statement of Pritpal Singh, which was recorded by learned CJM, Chandigarh on 14.03.2024, has been received in a sealed cover, which is opened in Court. The same is taken on record in original as **Mark-X**. Registry to tag / paginate the same at appropriate place in paper-book accordingly.

As per his statement, Pritpal Singh alleges that he was forcibly taken away from the territory of Punjab in District Sangrur by the Haryana police towards the Haryana side and was given merciless beatings; learned State Counsel representing Haryana as well as the State of Punjab have been asked as to whether any action has been taken in this regard so far, to which, they responded that as the statement was received by this Court only today, they need a copy thereof to respond.

Though, as per the petitioner, a complaint (P-3) was served upon the office of DGP, Punjab, with regard to abduction and beatings given to Pritpal Singh but no action was taken so far. Learned State

CRWP-1794-2024 (O&M)

[2]

Counsel representing State of Punjab, prays for time to get instructions on this as well.

On the other hand, learned counsel representing State of Haryana submits that on the basis of the same very occurrence as narrated by Pritpal Singh, an FIR No. 28 dated 21.02.2024 under Sections 147, 148, 149, 186, 188, 307, 332, 353, 427 & 506 of IPC and Section 25 (1B) a of Arms Act, stands registered at Police Station Garhi, Jind, and almost 15 police personnel were injured in the same incident, in which 08 of the police officials have named Pritpal Singh as the main instigator. He further submits that the Investigating Agency visited PGI, Chandigarh on 29.02.2024 for recording of the statement of Pritpal Singh; however, the doctors having declared him unfit, his statement could not be recorded and till today, the State of Haryana has not received the statement dated 14.03.2024 of the petitioner, which was recorded by the CJM, Chandigarh and thus strongly prays for a copy thereof to submit that the moment, the statement is supplied to the State of Haryana, a cross version shall be recorded and the matter shall be investigated in detail.

Learned Additional Advocate General, Haryana, also submits that once the alleged detinue has been traced out / located, the present petition has become infructuous and thus, no further orders are required.

As per the records, the injuries sustained by Pritpal Singh, the expert medical opinion thereupon and the affidavits, earlier filed on behalf of State of Haryana on 26.02.2024, the aforesaid stand now being taken by the State of Haryana that Pritpal Singh was named by police personnel(s) as the main instigator, clearly appears to be an

CRWP-1794-2024 (O&M)

[3]

afterthought and beyond comprehension, which compels this Court not to close the present petition as having been rendered infructuous with the release of Pritpal Singh.

Learned counsel representing State of Haryana, while relying upon the statements of certain police officials has gone on to contend that Pritpal Singh was the main instigator of the entire incident, which took place on 21.02.2024, resulting into registration of FIR No. 28 dated 21.02.2024 at Police Station, Garhi (Jind); however, the stand taken by the State of Haryana in its affidavit dated 26.02.2024 was that Pritpal Singh was found severely injured in the fields adjoining the barricades and considering his health condition, he was immediately got admitted to Civil Hospital, Narwana (Jind) from where he was shifted to PGIMS, Rohtak. Relevant portion of para-2 (e), (f) & (g) from the affidavit dated 26.02.2024 of Sh. Sumit Kumar, IPS, Superintendent of Police, Jind, is extracted hereunder:-

“ 2 (e) That after dispersing the protestors, Preetpal was found severely injured in the fields adjoining the barricades.

(f) That as Preetpal was severely injured, considering his health condition, Preetpal was immediately sent to be admitted to the Civil Hospital Narwana in the Ambulance.

(g) That Preetpal was got admitted in Civil Hospital, Narwana, District Jind on 21.02.2024 itself, wherefrom, he was further referred to PGIMS, Rohtak. It is pertinent to mention herein that since the petitioner belongs to village Nawangaon (Punjab) which is about 10 km away from Datasinghwala border (Khanauri border), someone may have informed family members of Preetpal about his injuries, therefore, family members of petitioner came to Civil Hospital, Narwana and they also escorted him to PGIMS Rohtak in their own vehicle.....”

CRWP-1794-2024 (O&M)

[4]

In the aforesaid affidavit dated 26.02.2024, the State of Haryana nowhere pointed out even a single finger towards Pritpal Singh of being instigator, neither any reference to the statements of any police personnel was made in the said affidavit, though the same was filed after almost five days of the incident dated 21.002.2024 and the investigation having already commenced by them.

Hon'ble Supreme Court in "**Sunil Batra v. Delhi Administration**", reported as **1980 SCC (3) 488**, not only a letter from a prisoner regarding his torture was converted into a habeas corpus petition but rather further corrective measures were also taken and it was observed that writ jurisdiction of Supreme Court under Article 32 and writ jurisdiction of High Courts under article 226 of Constitution of India are not bound by the rigid restraints of the traditional English Writs and Constitutional Courts would be a functional futility as a constitutional instrumentality if it guns do not go into action until the wrong is righted. Relevant Paras from this judgement are reproduced hereunder:-

“ 25. The canvas was spread wide by counsel and court and we deal with the arguments within the larger spread out of the case. Rulings of this court have highlighted the fact that the framers of our Constitution have freed the powers under Article 32 from the rigid restraints of the traditional English Writs. Flexible directives, even affirmative action moulded to grant relief, may realistically be issued and fall within its fertile width. The jurisdictional dimension is lucently laid down by Subba Rao, J. in Dwarkanath's case.

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for

which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.

26. *Where injustice, verging on inhumanity, emerges from hacking human rights guaranteed in Part III and the victim beseeches the Court to intervene and relive, this court will be a functional futility as a constitutional instrumentality if it guns do not go into action until the wrong is righted. The court is not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope. We hold that the court can issue writs to meet the new challenges. Lord Scarman's similar admonition, in his English Law - The New Dimensions, is an encouraging omen. The objection, if any, is obsolete because in a prison situation, a Constitution Bench of this Court Batra and Sobraj case did imprison the powers of prison officials, to put an under-trial under iron fetters or confine in solitary cells convicts with death sentences under appeal.*

CRWP-1794-2024 (O&M)

[6]

27. *Once jurisdiction is granted - and we affirm in unmistakable terms that the court has, under Article 32 and so too under Article 226, a clear power and, therefore, a public duty to give relief to sentences in prison settings - the next question is the jurisprudential backing for the play of that jurisdiction. Here again, Batra has blazed the trail and it binds.*”

The contention raised on behalf of the State of Haryana as regards the petition having been rendered infructuous is also not made out in terms of law down by the Hon’ble Apex Court in **“Lalita Kumari Versus Govt. of U.P. and others”** reported as **AIR 2014 SC 187**, which specifically directs the initiation of performing the statutory duties in terms of Code of Criminal Procedure, once factum of cognizable offence is brought to the notice of the authorities, especially when the cause of filing the present habeas petition is in continuation and directly co-related to the incident as expressed by the Pritpal Singh in his statement dated 14.03.2024 and relates to his fundamental right under Article 21 of the Constitution of India as that of his life and liberty.

In view of the above, the State of Punjab is directed to furnish its response after obtaining a copy of the statement of Pritpal Singh as recorded on 14.03.2024.

Adjourned to **02.04.2024**.

A copy of the statement dated 14.03.2024 made by Pritpal Singh be handed over to the counsel for parties against due receipts, as requested by them.

March 15, 2024

'dk kamra'

**(HARKESH MANUJA)
JUDGE**