

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(Cr.) No. 623 of 2023

Manga Singh Petitioner

-- Versus --

Union of India, through Narcotics Control Bureau (NCB), Sub Zone,
Ranchi, P.O. Morabadi, PS Lalpur, District Ranchi ...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Shailesh Poddar, Advocate

For Union of India (NCB) :- Mr. Anil Kumar, A.S.G.I.

Ms. Chandana Kumari, A.C to A.S.G.I.

2/06.09.2023 This petition has been filed for quashing of the F.I.R bearing N.C.B. Crime No.04/2015 (02-2015/16), corresponding to NDPS Special Case No.17/2015 (N) registered under sections 8/18(b) of NDPS Act, 1985, pending in the court of learned A.J.C.-I, Ranchi. The prayer is also made for quashing of the order dated 01.04.2016 by which cognizance has been taken so far the petitioner is concerned. The prayer is made for release of the petitioner and to pay a compensation of Rupees Fifty Lacs to the petitioner.

2. The learned counsel for the petitioner submits that the surviving defects may kindly be ignored as in the impugned order the party name is not disclosed and the said certified copy has been filed as it is.

3. In view of such submission, the surviving defect is ignored.

4. The complaint case has been filed stating therein that on 06.10.2015 in the evening around 10 persons, some of whom were wearing police uniform suddenly came to the 'Pataila Dhabha' situated in Barachatti, Gaya where petitioner was working as a waiter and cleaner. They hand-cuffed the present petitioner and forcefully made him sit in their Bolero vehicle. Later they informed him that they are NCB officials.

Thereafter the said NCB officials went to one Parmanand Vishwakarma on whose land the present Dhabha is being run. From his house that NCB officials forcefully took away his Belero Vehicle along with his personal belongings in order to falsely implicate them in a drug related offence. The said NCB officials then took the present petitioner and his Dhabha owner Tajendra Singh to Ranchi where they demanded Rs.10 lakhs from the petitioner in order to release him to which the petitioner expressed his inability to pay such a high amount as he belongs to a poor family. The NCB officials then demanded Rs.15 lakhs from Tajendra Singh to which Tajendra Singh called his home and arranged the said money for the NCB officials and hence he was not made an accused in the instant case.

5. The learned counsel for the petitioner submits that the petitioner and one Parmanand Vishwakarma were falsely implicated in the said case which was lodged as NCB crime. He further submits that the petitioner is in jail custody since 07.10.2015 in a case in which nothing has come against the petitioner. He submits that on a false seizure list, the petitioner has been implicated by the Narcotics Control Bureau (NCB) and in view of that, the NCB has twice filed the petition under section 321 Cr.P.C before the learned trial court for withdrawal of the prosecution registered against the petitioner and others innocent persons which was rejected by the learned trial court vide order dated 22.10.2020 and on 11.04.2022 respectively. He further submits that the NCB, Ranchi thereafter even preferred one revision petition being Cr.Revision No.1092 of 2022 against the order dated 11.04.2022 which is pending before the coordinate Bench of this Court wherein the prayer is made for quashing of the said two orders passed by the learned Special Judge, NDPS. He further submits that the co-accused Parmanand Vishwakarma was arrested in this case and he preferred one regular bail application bearing

B.A. No.5409 of 2023 and in that case seeing falsity of the case he has been granted bail by the co-ordinate Bench vide order dated 18.08.2023.

6. The above position is also admitted by Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the respondent-NCB (UOI). He submits that it transpires that the petitioner and one another accused have wrongly been implicated in the case and that is why the said withdrawal petitions have been filed before the learned court which were rejected which is the subject matter before this Court and the direction has also been issued to proceed departmentally against the erring Narcotics Control Bureau (N.C.B.) officials and the F.I.R has also been registered and the sanction has also been granted.

7. In view of the above facts and the submissions of the learned counsels appearing on behalf of the parties, it appears that the petitioner has falsely been made accused in the instant case which was found to be false by none other than the agency which has implicated the petitioner. By the two orders dated 22.10.2020 and 11.4.2022, the learned court has dealt elaborately about the facts and has rejected the petitions. Section 321 of the Cr.P.C speaks of withdrawal from the prosecution based on the said section, twice the applications have been made by the Narcotics Control Bureau (NCB) for withdrawal of the case. In aforesaid background, it is an admitted fact that the petitioner has been falsely implicated in the case in hand and he is languishing in jail since 07.10.2015 and if such a situation is there, considering Article 21 of the Constitution of India, the liberty of the petitioner has been taken and this fact has been brought before this Court under Article 226 of the Constitution of India. This Court cannot be a mute spectator.

8. In the revision petition filed by the respondent N.C.B. which is annexed with the present petition as Annexure-10, wherein it has been disclosed that on 06.10.2015, Kaushalya Devi mother of the co-accused

Parmanand Vishwakarma gave a written complaint in police station which was registered as Barachatti P.S. Case No.448 of 2015 wherein she alleged that few people in civil dress along with police unsettled the entire house and took away the necessary documents and the articles and she further stated that the officers were enquired about the whereabouts of his second son namely Parmanand Vishwakarma and they also misbehaved with the complainant and the said allegation was found to be genuine and the witnesses supported the allegation made by Kaushalya Devi and the evidences also supported the allegation made by Kaushalya Devi and pursuant to the evidences collected by the police officers of the Barachatti Police Station and supervision was also made by the Superintendent of Police (Town) Gaya on 31.12.2015. The said Kaushalya Devi filed Cr.W.J.C No.1177 of 2016 before the Hon'ble Patna High Court for issuance of appropriate writ for holding an enquiry against the erring officers of Narcotics Control Bureau (NCB) team in connection with Barachatti P.S. Case No.448 of 2015 so that the real culprit may be punished. The Barachatti police sent a request to the Director General, N.C.B. on 23.3.2020 for giving sanction for prosecution against the N.C.B. officials under section 197 Cr.P.C. The accused in Barachatti P.S. Case were Shailendra Prasad, Manoj Kumar Chauhan, Manish Modi, Sudhir Nayak, Ras Bihar Kumar, Devashish Choudhary and D.K. Srivastav and thereafter the Headquarter of N.C.B., New Delhi granted sanction and initiated an enquiry against the accused persons on 24.7.2021. The erring officials of N.C.B Sub Zone Ranchi has violated the section 58 of NDPS and accordingly, a case being NCB/BZU/V/ 09/2020 dated 24.7.2020 was registered with N.C.B., Patna, Zonal Unit against eight NCB officials. The charge sheet is submitted against the erring officials in Special Case No.55/2020 and pursuant to that N.C.B/ BZU/V/09/2020. These all facts have been disclosed in the revision petition filed by the N.C.B Ranchi

which is Annexure-10. Thus, it is an admitted case that the petitioner has been falsely made an accused and in that view of the matter, Article 21 of the Constitution of India has been violated and the liberty of the petitioner has been snatched by none other than the officials of the N.C.B. Time and again, the Constitutional Courts have made emphasis upon the protection of the liberty of a particular person.

9. Article 21 of the Constitution of India says- "no person shall be deprived of his life or personal liberty except, according to procedure established by law". According to the Hon'ble Supreme Court of India in ***Menka Gandhi v. Union of India, (1978) 1 SCC 248***. Article 21 of the Constitution of India envisages reasonable, fair and just procedure. Clauses (4) to (7) of Article 22 of the Constitution of India provide some protection to the individual in preventive detention by requiring the law providing for preventive detention to contain a few procedure safeguards mentioned therein. Cl.5 of the Article provides that the detaining authority "shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making representation against the order". It is necessary to give the grounds on which the order of detention has been made against a person otherwise he may remain in custody without having the least idea as to why his liberty has been taken away. This is considered as an elementary right in a free democratic country. Article 22(5) of the Constitution of India confers on the detenu the right to make a representation, but not a right of being heard orally, or through a lawyer, or to lead evidence and in view of that, in the case of ***Shalini Soni v. Union of India, (1980) 4 SCC 544***. The Hon'ble Supreme Court has implied an obligation on the part of the Government to consider the detenus representation at the earliest. In the case in hand, the petitioner is languishing in jail since 07.01.2015 i.e. more than eight

years and that too, due to fault of the officials of Narcotics Control Bureau (NCB).

10. A person has spent his prime time in jail for the act of the erring officials of the Narcotics Control Bureau (NCB) and if the liberty is taken away, the petitioner is entitled for compensation as has been held in several cases by the Hon'ble Supreme Court as in the case of **Rudul Shah v. State of Bihar, (1983) 4 SCC 141**, the Supreme Court was faced with a situation, where the petitioner, who was acquitted by the Court was released from the jail after more than 14 years. The petitioner has approached the Court asking for his release on the ground that his detention was illegal and claimed compensation for his illegal incarceration. The Supreme Court while awarding compensation in favour of the petitioner in the said case has observed as under:

"9. It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a Court of lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this Court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to

compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

54. The order of compensation passed was in the nature of a palliative, leaving the petitioner the liberty to file a suit for compensation, wherein the nice points of facts and law could be adjudicated upon.

11. It has been held that infringement of a fundamental right under Article 21 against the State is an appropriate and effect remedy subject to upon the facts and circumstances of the each case. Para-38 of the ***Sube Singh Versus State of Haryana & Ors.*** reported in **(2006) 3 SCC 178** as below:-

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and

circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Civil Procedure.”

12. In the case of ***Nilabati Behera v. State of Orissa, (1993) 2***

SCC 746 it is held as under:

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

13. The police atrocity or custodial violence infringes not only right to life but also basic human rights and strikes a blow at rule of law. Tortures involves not only physical suffering, but also mental agony which is a naked violation of human dignity and destructive of human

personality. Third-degree methods of interrogation and investigation cannot be permitted. It was held that transparency of action and accountability are two safeguards against abuse of police power, though the right to interrogate the detenus, culprits or arrestee in the interest of nation, must take precedence over the individual's right to personal liberty, and the action of the State must be "right, just and fair". Supreme Court gave certain guidelines in the nature of requirements to be followed in all cases of arrest or detention, as below:

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

(ii) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at 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 counter-signed by the arrestee and shall contain the time and place of arrest.

(iii) 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 attributing witness of the memo of arrest is himself or such a friend or a relative of the arrestee.

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

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

(vi) 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 his person who has

been informed of the arrest and the name of the particulars of the police officials in whose custody the arrestee is.

(vii) The arrestee should, when he so requests, be also examined at the time of arrest and major and minor injuries, if any present on his or her body must be recorded at that time. The "inspection memo" must be signed by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

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

(ix) Copies of all documents including the memo of arrest should be sent to the Magistrate for his record.

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

(xi) 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.

14. It was declared that the requirements flow from Arts. 21 and 22(1) and should be strictly followed. The requirement was held to apply with equal force to the other governmental agencies like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, CRPF, BSF, CISF, State Armed Police, Intelligence Agencies like Intelligence Bureau, RAW, CBI, CID, Traffic Police, Mounted Police and ITBP. The requirements declared are in addition to the constitutional and statutory requirements and also other directives given by the court from time-to-time connection with safeguarding of the rights and dignity of the arrestee. The above guidelines and observation was made in the caes of ***D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.***

15. In all the above, observations and the guidelines have been made by the Hon'ble Supreme Court in the case of ***D.K.Basu(supra)***

and in the case in hand, the way in which the petitioner has been kept in illegal confinement in view of the petition filed by the Narcotics Control Bureau (NCB) clearly suggest that it is a proved case of atrocity and if such a case is there, this case is not being an exception in view of the guidelines made by the Hon'ble Supreme Court in the case of D.K.Basu(supra).

16. The alarming increase in custodial torture, assault and death in police custody and if there is direct apprehension of such case, the Court sitting under Article 226 of the Constitution of India, if such facts are brought to the knowledge of the Court, the Court is duty bound to pass appropriate order and even in illegal confinement, the power under Article 226 of the Constitution of India can be invoked. A reference may be made to the case of ***Arnav Manoranjan Goswami v. State of Maharashtra and Others, (2021) 2 SCC 427.***

17. In view of above and considering that it is an admitted position that the petitioner has falsely been implicated in the case and case for withdrawal has also been filed under section 321 of the Cr.P.C. by none other than the N.C.B. which was rejected that is the subject matter in criminal revision before the co-ordinate Bench of this Court, the entire criminal proceeding arising out of F.I.R. N.C.B. Crime No.04/2015 (02-2015/16), corresponding to NDPS Special Case No.17/2015(N), pending in the court of learned A.J.C.-I, Ranchi including the impugned order dated 01.04.2016 are quashed.

18. The petitioner is directed to be released forthwith and the necessary formalities shall be made by the authority concerned without any delay.

19. He has remained in jail custody for about eight years for a crime which he has not committed. In view of the above position of law, the petitioner shall be entitled for a sum of Rs.8 lacs(Eight Lacs) as

compensation and the same shall be paid to the petitioner through the Additional Director General of the Narcotics Control Bureau (NCB), Sub Zone, Ranchi within eight weeks from the date of receipt/ production of a copy of this order.

20. W.P.(Cr.) No.623 of 2023 is allowed in the above terms and disposed of.

21. Pending petition also stands disposed of accordingly.

22. It is open to the Narcotics Control Bureau (NCB) to recover the said amount from the erring officials if they are found guilty of that.

23. Since the order is long one and it may take time to be typed and corrected and in view of that, a separate order with regard to the release of the petitioner be drawn and the release part shall be communicated through the concerned court and the Registrar General of the Court to the concerned court and the concerned jail namely, Birsa Munda Central Jail, Hotwar, Ranchi.

(Sanjay Kumar Dwivedi, J.)

SI/
A.F.R,