

Case :- HABEAS CORPUS No. - 36848 of 2019

Petitioner :- Mohd. Shoaib Thru Next Friend Gaurav Kumar Kashyap

Respondent :- State Of U.P.Thru Prin.Secy. Home And Ors.

Counsel for Petitioner :- Atul Benjamin Solomon,Alok Singh Chauhan

Counsel for Respondent :- G.A.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Rajan Roy,J.

This Bench has been constituted to hear this petition under the order passed by the Hon'ble Senior Judge on 20.12.2019.

Supplementary affidavit filed on behalf of the petitioner is taken on record.

Petitioner is a lawyer and has filed this writ petition through his next friend, Shri Gaurav Kumar Kashyap who is also an Advocate.

Allegations in the petition are that on 17.12.2019 the City Magistrate, Lucknow by passing an order under Section 107/116 of the Code of Criminal Procedure required the petitioner to furnish security for which the date fixed by the City Magistrate in the said order is 23.12.2019. It has further been averred in the petition that on 18.12.2019 the petitioner was served with an order passed by the Station House Officer, Police Station- Aminabad under Section 149 Cr.P.C. prohibiting him that he shall neither organize nor participate in any agitation or procession which may violate Section 144 of the Cr.P.C. which had been promulgated.

Learned counsel appearing for the petitioner has stated that in the intervening night of 19-20.12.2019 at 00:00 hours certain police personnel took the petitioner out of his house and since then his whereabouts are not known.

Today, supplementary affidavit has been filed, wherein, an application dated 20.12.2019 by wife of the petitioner has been annexed which is addressed to the Senior Superintendent of Police. Through said application wife of the petitioner had inquired as to whereabouts of her husband. In the application it has also been stated by the petitioner's wife that the petitioner was kept under house arrest since 5.30 p.m. on 18.12.2019 and that the police had taken him out of his residence at around 11.45 p.m. in the night informing the petitioner that he had been summoned by the Circle Officer, however, from the said point of time whereabouts of the petitioner are not known.

In the aforesaid facts and circumstances, it has been contended by the learned counsel for the petitioner that detention of the petitioner by the police is unlawful and as such this Court may pass appropriate orders issuing a writ of habeas corpus setting the petitioner free.

On the other hand learned Additional Government Advocate on the basis of instructions received from Station House Officer, Police Station- Aminabad, Lucknow has stated that petitioner was arrested at 08.45 a.m. on 20.12.2019 from Clarks Avadh Tiraha, Lucknow, as he was wanted in connection with Case Crime No. 0600 of 2019, registered under Sections 147, 148, 149, 152, 307, 323, 504, 506, 332, 353, 188, 534, 436, 120-B, 427 I.P.C, Section 3, 4 of the Prevention of Damage to Public Property Act, 1984 and Section 7 of the Criminal Law (Amendment) Act, 1932. He has further stated that said First Information Report was lodged in relation to an incident which had occurred on 19.12.2019 at 13.15 p.m. and said incident potentially created lawlessness. Learned Additional Government Advocate has further stated that various persons indulged in violent agitation which led to disruption of public

order.

Refuting the submissions made by the learned A.G.A., it has been stated by learned counsel appearing for the petitioner that as a matter of fact petitioner was not part of the agitation or the incident in respect of which the First Information Report was lodged at Police Station Hazratganj on 19.12.2019 and further that by posting a police picket in front of the house of the petitioner, he was virtually arrested in his house. These allegations have been leveled in the application said to have been submitted by wife of the petitioner to the Senior Superintendent of Police, as well.

In the instructions submitted by the S.H.O., P.S. Aminabad, Lucknow to the Office of the learned Government Advocate it has been stated that some information as mentioned in Para 6 of the petition, was given by some one in the house of the petitioner at Dial 112 in the intervening night of 19-20.12.2019, however, no specific information was furnished.

Instructions contained in the letter of S.H.O., P.S.- Aminabad, dated 21.12.2019 are taken on record.

Learned Additional Government Advocate has also submitted that on being arrested on 20.12.2019 petitioner was produced before the Magistrate who has remanded him to Judicial Custody and pursuant thereto he is lodged in Jail.

The extract of the General Diary, P.S. Hazratganj recorded at 10.14 a.m. on 20.12.2019 states that after arresting the petitioner, he was sent for his medical examination to Civil Hospital.

In the aforesaid circumstances, we call upon the learned A.G.A. to file a comprehensive affidavit in reply to the averments made

in the petition as also to the facts mentioned in this order. The affidavit to be filed by the learned A.G.A. shall also contain a true copy of the arrest memo and documents revealing the fact that petitioner on his arrest was sent to the Civil Hospital and was medically examined. The affidavit to be filed under this order by the learned A.G.A. shall be served upon the learned counsel for the petitioner by 24.12.2019.

Rejoinder affidavit or reply by the petitioner shall be filed by the next date of listing.

It is specifically directed that right of visitation to family member(s)/ lawyer(s) of the petitioner shall be made available by jail authorities and other police authorities as per law.

List this case on the opening of the Court i.e. 02.01.2020 as fresh.

Order Date :- 21.12.2019

R.K.P.

(Rajan Roy,J.)

(Devendra Kumar Upadhyaya,J.)