

IN THE SUPREME COURT OF INDIA
CRL MP NO.....OF 2020
IN
WRIT PETITION CRIMINAL NO. 307 OF 2020

IN THE MATTER OF :-

Kerala Union Of Working Journalists Petitioner

Versus

Union of India and Ors Respondents

CRL MP NO.....OF 2020.
Application for interim Directions

WITH

CRL MP NO.....OF 2020.
Application for Bail

WITH

CRL MP NO.....OF 2020.
Application for exemption from filing official
translation of annexures .

ADVOCATE FOR THE PETITIONER: SHREE PAL SINGH

FILE NO.2767/2020/29102020/WILLSMATHEWS/9810068631

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..... Petitioner

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.....Respondents

APPLICATION FOR INTERIM DIRECTIONS

The Hon'ble Chief Justice and his
Companion Judges of the Hon'ble
Supreme Court of India.

The humble application of the
petitioner above named.

MOST RESPECTFULLY SHOWETH.

- 1) The above mentioned Writ Petition of Habeas Corpus was filed by the Petitioner organisation, the Kerala Union of Working Journalists (KUWJ), New Delhi Unit, aggrieved by the illegal arrest and detention of Mr. Sidhique@ Sidhique Kappan S/o. Mohammed, the Secretary of the New Delhi unit of KUWJ on 05.10.2020. The Detenue was unlawfully taken into the custody of Uttar Pradesh State police while on the way to the town of Hathras to report a crime of national importance.

2) At the time of filing the present writ petition, neither the office bearers of the Petitioner organisation, nor the friends nor the family members of the Detenue were made aware of the reasons for the arrest of Mr. Sidhique. The arrest itself was completely unlawful, and without complying the guidelines of this Hon'ble court in ***D K Basu v. State of West Bengal*** reported in 1997 1 SCC 416. It appears that the police records state that the Detenue was arrested under the powers of preventive detention under Section 151, 107 and 116 of the Code of Criminal Procedure, 1973 ("CrPC") on 05.10.2020 at 16.50 PM. However, no notice or order was served on the Detenue requiring him to execute a bond as envisaged under Section 107 CrPC. No order under Section 111 CrPC had been communicated to the Detenue requiring him to execute a bond under Section 107 CrPC. No inquiry under Section 116 CrPC had been initiated against the Detenue and no order for execution of a bond having been issued, there was no question of taking the Detenue into custody under sub-section 3 of Section 116 CrPC. The initial and continuing detention of the Detenue under Sections 107/116/151 CrPC is in brazen defiance of the statutory mandate of sub-section (3) of Section 116 Sub-section (2) of Section 151 of the Code, and that of Articles 20 and 21 of the Constitution of India. A true copy of the arrest form along with English translation dated 05.10.2020 along with other records is enclosed herewith as **ANNEXURE-P1 (Pages. 13..to.21..)**.

- 3) After the expiry of 24 hours, the Detenue continued to be held under illegal detention. That on 06.10.2020, as the office bearers of the Petitioner organisation and the family members of the Detenue were unable to contact the Detenue or get any information as to his whereabouts and the grounds for his detention despite over 24 hours since his illegal detention, the Petitioner filed the above writ petition.
- 4) On 07.10.2010, the Petitioner was made aware that an FIR NO.0199/ dated 07.10.2020 was registered at PS Mant, time-6.13, Dst. Mathura, for the alleged commission of offences U/S. 153-A, 295-A, 124-A of IPC, offences under Sections 17,14 – of UAPA, and offences under section 65,72,76 of I T ACT against Detenue. It is submitted that the FIR contains no averments against the Detenue. This FIR relates to speech on certain websites which is stated to be in contravention of the abovementioned provisions of law, however, the offending speech and the manner in which such speech contravenes the law is not specified. The URL and names of the alleged offending websites are not specified. The source of the information as to these websites is stated to be “news published in some media reports in different mediums.” The said FIR is completely frivolous and does not disclose the commission of any offence. A true copy of the FIR along with English translation dated 07.10.2020 is enclosed herewith as **ANNEXURE-P2** (Pages...२२...to...३५.....).

- 5) That on 12.20.2010, the present writ petition came up for hearing before this Hon'ble Court on which date this Hon'ble court was pleased to permit the Petitioner to amend the writ petition to incorporate the subsequent developments in the case.
- 6) That on 16.10.2020 the Advocate for the Petitioner visited the Court of the Chief Judicial Magistrate, Mathura and the Mathura New temporary jail for an interview with the Detenue /accused for the purpose of gathering information for amendment of the present writ petition. An application seeking permission to visit the Detenue and conduct an interview in accordance with Clauses 457-A and 457-D of the Uttar Pradesh Jail Manual was preferred. Three past and present officials of the Petitioner organisation also requested permission to meet the Detenue. A true copy of the application for permission to meet the accused filed before the CJM Court, Mathura is enclosed herewith as **ANNEXURE-P3. (Pages.३६.to.३३.)**.
- 7) The advocate of the petitioner approached the Hon'ble CJM Court Mathura and on their directions again approached the Jail Authorities, and on their refusal again approached Hon'ble CJM Court Mathura. The application for permission to meet the accused was rejected by the Ld. CJM, Mathura on 16.10.2020. A true copy of the order dated 16.10.2020 passed by the Ld. CJM Court, Mathura rejecting the application for meeting the accused is enclosed herewith as

ANNEXURE-P4. (Pages.....to.39..). There are no justifiable grounds to reject the application of the counsel for the petitioner to meet the accused, and the said order violates fundamental rights of the Detenu and is against the spirit of rule of law. It is relevant to mention here that, on production of the Detenu before the Court of the Ld. CJM, Mathura on 06.10.2020 the counsel for the petitioner made an attempt to meet the Detenu, which was refused by the Ld. Presiding Officer, and the counsel was directed to meet the Detenu in jail. The Detenu was prevented from signing a vakalatnama for authorising his counsel to act on his behalf.

8) The affidavit of Advocate who approached the Ld. CJM Court and the Jail Officials Mathura on 16.10.2020 at Mathura narrating the complete facts, including various illegalities seen inside the court and the horrific cries of the inmates of the jail in Mathura is enclosed herewith as **ANNEXURE-P5. (Pages..40....to....51.....).**

9) The contents of the affidavit by the lawyer dated 16.10.2020 are not repeated herein for the sake of brevity. As the office bearers of the Petitioner organisation and their lawyers were denied permission to meet the Detenu, the Petitioner could not amend the present writ petition, or take necessary steps for the relief including filing petition for quashing of FIR on the ground that the ingredients of the offence are not made out. For the reasons as elaborately stated in the

affidavit of the lawyer dated 16.10.2020 annexed herewith, the Petitioner fears that the life of the Detenue and those who are in the jail are in danger.

- 10) The members of the Petitioner organisation are also scared to discharge their duty as a journalist /media professionals independently and impartially, and now even to visit the Detenue in Mathura jail, as the arrest of the Detenue was without complying the guidelines of this Hon'ble court in ***D. K Basu v. State of West Bengal*** , reported in **1997 1 SCC 416**, and subsequent directions of this Honble Court on this issue. The present case has witnessed a complete denial of the fundamental rights of the Detenue, from the act of rejecting the oral request of the lawyer of the Petitioner for meeting the client and to get the vakalatnama signed at the time of production before the Ld. CJM, Mathura on 06.10.2020 to the act of rejecting the proper application of the lawyer and the officials of the petitioner for an interview with the Detenue, despite annexing the Order dated 12.10.2020 passed by this Hon'ble Court in the present writ petition. Over and above these violations, the horrific conditions of the prisoners in the New Temporary jail of Mathura even without basic security measures against the COVID-19 virus, amounts to a serious denial of their fundamental rights and the express directions of this Hon'ble Court in Suo Motu Writ Petition (Civil) No.1/2020 titled "IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS."

- 11)** The 90 year old mother of the detenue Mrs. Kadija Kutty, the wife Mrs. Raihanath and children of the Detenue presently reside in the State of Kerala. They are unable to travel to Mathura, Uttar Pradesh given the vulnerability of the elderly mother and young children to the COVID-19 virus. No opportunity for video-conferencing was allowed and the request for e-Mulakat under the ePrisons system was also rejected. These family members are totally dependent on the Detenue and have no other earning member of the family to take care of them. The mother of the accused is seriously sick and her illness is only augmented by the fear for the safety of the Detenue.
- 12)** The Detenue suffers from severe diabetes and needs timely medicines, special diet, special exercises, failing which his life is in danger.
- 13)** The possibilities of an effective amendment of the present writ petition is also diminished in the light of the rejection of the application for meeting the detenue in the jail, and presently the Petitioner is helpless with no alternative remedies under the procedure established by law. There is violation of fundamental rights, human rights, rule of law, and there exists a lot of helplessness among the journalistic fraternity in discharging their duty fearlessly considering the fate of the present Dentenue.
- 14)** The manner of arrest of the Detenue and the rejection of application dated 16.10.2020 for meeting the

accused/Detenué before the CJM court and Mathura Jail has given rise to the fear that the ultimate test of democracy “Freedom of speech and expression ” seems to be in danger.

15) The Petitioner, the association of New Delhi unit of media professionals of the petitioner submits that, the media is the breath of democracy. It is respectfully submitted that, for a media professional there is no fixed time table, no planning, no weekly off, need to travel anywhere at any time by any means focusing on the news to cover , let it be flood, natural calamities, act of terrorism, illegalities, crimes, political developments, cultural activities, agriculture, trade, commerce, and on all issues concerning the citizens, even risking their life. The arbitrary and illegal arrest of journalists covering news of national importance as has been done in the present Detenué’s case will seriously affect the work of the media professionals , meaning thereby seriously prejudice the right of the people to get the news and it is the end of democracy.

16) It is respectfully submitted that, the issue before this Hon’ble court is an issue affecting not just journalists but the entire people as a whole, their right to know, the freedom of the “WE, THE PEOPLE OF INDIA” to know the correct facts.

17) The Petitioners reserves the right to amend the present writ petition with more facts and grounds after having an interview with the accused/Detenué .

- 18) This Hon'ble court permitted the petitioners to approach this Hon'ble court in case of serious human rights violations, or violations of the rule of law while hearing the present writ petition on 12.10.2020 and hence the present application .
- 19) The petitioner has not filed any petition of application in any courts of law for the same relief other than in the court of CJM Mathura for meeting the accused, which was rejected on 16.10.2020.
- 20) The petitioner is left with no other alternative effective remedy other than filing the present application as the applicants nor their lawyer could not meet the accused for conference and for getting the vakalatnama signed and are totally in the dark about the accused as no contacts, information's about the accused after his arrest on 05.10.2020 . Hence the present application.
- 21) The present application is in the interest of justice and in the ends of justice.
- 22) The petitioner and the accused is ready to comply with any conditions imposed by this Honble court.

PRAYER

In the above mentioned facts and circumstances, it is most respectfully prayed that, this Hon'ble court may be graciously be pleased to :-

- A. Direct the jail authorities to permit three office bearers of the Petitioner organisation and their Lawyers to conduct regular interviews with Detenue over video conferencing.
- B. Direct the jail authorities to permit the family members of the Detenue to conduct regular interviews with the Detenue over video conferencing.
- C. Direct the jail authorities to permit the Detenue to sign a vakalatnama authorising his legal representatives to act on his behalf in his legal defence and in other connected legal proceedings and have the same forwarded to the duly authorised counsel of the Detenue
- D. Pass an order directing the District Judge Mathura or a High Court Judge for the immediate visit of the New Mathura Jail located near Ratanlal Phoolkatori Devi School ,Mathura ,to enquire on Human Rights Violations in the Jail and in the courts of Mathura as elaborately stated in the affidavit of the advocate for the petitioner and to submit report before this Hon'ble court, and to take immediate corrective steps .
- E. And pass any further order or orders in the interest of justice and in the ends of justice.

FOR THIS ACT OF KINDNESS THE PETITIONER IS EVER
DUTY BOUND SHALL EVER PRAY.

Drafted by-Adv. Wills Mathews

Filed By

SHREE PAL SINGH
(Advocate for petitioner)

Date-29.10.2020

Place:- New Delhi

Typ/2767/2020