

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Writ Petition No.17786/2020

Namdev Das Tyagi @ Computer Baba v/s The State of Madhya Pradesh & Others

Indore, dated 15.11.2020

Shri Ravindra Singh Chhabra, learned counsel for the petitioner.

Shri Pushyamitra Bhargav, learned Additional Advocate General for the respondents / State.

The petitioner before this Court, Namdev Das Tyagi @ Computer Baba has filed this present writ petition in the nature of *habeas corpus*. The matter was heard today i.e., on Sunday through video conferencing.

The petitioner's contention is that on 08.11.2020, on account of allegation of illegal construction, his *Ashram* was demolished and he was detained on 08.11.2020 itself along with his disciples. The petitioner's further contention is that his six disciples were released on 09.11.2020, however, he has not been released and no order was passed in the matter.

It has also been stated that as per requirement of Section 151 of the Code of Criminal Procedure, 1973, if a person is under detention beyond 24 hours, an order has to be passed authorizing his detention and as nothing was being done in the matter, a revision was preferred before the District Judge, Indore, which was taken up on 11.11.2020. On 11.11.2012, it was informed that some order has been passed earlier in respect of the detention and the revision was disposed of.

It has further been argued by Shri Chhabra that the

copy of order was not given to the petitioner nor to his counsel and after knowing the contents of the order, the petitioner came to know that he has been directed to furnish a bank guarantee for a sum of Rs.5,00,000/- for his release to the satisfaction of Sub Divisional Magistrate.

It has been further stated that the bank guarantee was prepared immediately in the matter and the same is also on record, however, the authorities are not accepting the bank guarantee.

Learned counsel for the petitioner has further argued that subsequently, a First Information Report has been lodged on 12.11.2020 at Police Station – Gandhi Nagar in respect of the incident dated 08.11.2020 for the offences punishable under Sections 353, 323, 294, 186, 506/34 of the Indian Penal Code r/w section 3 of Schedule Caste & Schedule Tribe (Prevention of Atrocities) Act, 1989.

Learned counsel for the petitioner has further argued before this Court that in respect of alleged incident, a false allegation has been levelled against the petitioner that he has misbehaved with the Panchayat Secretary, he has interfered in the process of demolition and there are other allegations also. It has been stated that the F.I.R. is an afterthought to circumvent the petitioner's release in respect of Case No.1849/2020 under Section 151 of the Code of Criminal Procedure, 1973.

Heavy reliance has been placed upon judgments delivered in the cases of *D.K. Basu v/s The State of West Bengal* reported in (1997) 1 SCC 416 and *Ahmed Noor*

Mohammad Bhatti v/s The State of Gujrat reported in (2005) 3 SCC 647 as well as on other cases.

It has also been argued by learned counsel that in the case of *Arnab Manornjan Goswami v/s The State of Maharashtra & Others [Special Leave Petition (Criminal) Diary No.(s).24646/2020]* dated 11.11.2020, the Hon'ble Supreme Court has directed the release of the petitioner therein.

On the other hand, Shri Pushyamitra Bhargav, learned Additional Advocate General has vehemently argued before this Court that the authorities were ready to accept the bank guarantee, however, it was not submitted, and therefore, the petitioner has not been released. He has also stated that so far as the criminal cases against the petitioner, if any, are concerned, the Code of Criminal Procedure provides for grant of bail / anticipatory bail and a writ petition in the nature of *habeas corpus* is not maintainable in the peculiar facts and circumstances of the case.

Heard learned counsel for the parties at length and perused the record.

In the considered opinion of this Court, the present case requires a detailed reply and the same be filed positively within four weeks.

So far as the prayer for grant of interim relief is concerned, there is already an order dated 09.11.2020 directing the petitioner to furnish the bank guarantee of Rs.5,00,000/-, he has prepared a bank guarantee also, and therefore, the State is directed to accept the bank guarantee

and to release the petitioner so far as Case No.1849/2020 is concerned (151 of the Code of Criminal Procedure). The counsel for the petitioner shall appear before Shri Parag Jain, Sub Divisional Magistrate today at 12:30 pm and shall furnish the bank guarantee enabling him to pass appropriate order in accordance with law.

Shri Pushyamitra Bhargav, learned Additional Advocate General has undertaken before this Court to keep Shri Parag Jain present in the office at 12:30 pm. It is further made clear that so far as aforesaid case is concerned, in case, the Sub Divisional Magistrate creates any hurdle or objection in respect of the bank guarantee in respect of the release of the petitioner in respect of the aforesaid offence, the petitioner shall be released on furnishing a personal bond in the sum of Rs.50,000/- to the satisfaction of Jail Superintendent, Central Jail Indore.

So far as the other criminal cases are concerned, the petitioner shall be free to file a bail application under the provisions of the Code of Criminal Procedure at the first instance before appropriate forum.

The Registry of this Court has informed this Court that in the District Court, a Judicial Officer at the rank of Additional District Judge as well as Chief Judicial Magistrate shall be available tomorrow, and therefore, the petitioner shall be free to submit his bail application in respect of other criminal cases and the bail application of the petitioner shall be decided on the same day in accordance with law.

Shri Pushyamitra Bhargav, learned Additional

Advocate General has also ensured this Court he will make the case-diary available tomorrow before the learned Judge and service of notice to the complainant shall also be done by the office of Advocate General through the Investigating Officer in respect of the bail applications tomorrow itself.

It is made clear that the release of the petitioner in respect of the proceeding under Section 151 of the Code of Criminal Procedure, 1973 shall certainly be subject to other criminal cases and the order passed by the Court having jurisdiction in the matter. In case, the petitioner is not required to be detained in any other criminal case, he shall be released forthwith.

List the matter on **2nd December, 2020.**

Certified copy, as per rules.

(S.C. SHARMA)
J U D G E

(VIVEK RUSIA)
J U D G E

Ravi