

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

Cr.WP No. 9840 of 2020

**IN THE MATTER OF:-**

Haryana Progressive Farmers Union - Sabka Mangal Ho;

Through its Convenor Deepak Lohan

.....Petitioner

**//VERSUS//**

**1. State of Haryana**

Throught its Additional Chief Secretary to Government, Haryana, Home Department, Room No. 47, 9th floor, Haryana Civil Secretariat, Sector1, Chandigarh.

**2. Director General of Police, Haryana**

Police Headquarter, Sector – 6, Panchkula (Haryana)

**CRIMINAL WRIT PETITION** under Article 226/227 of the Constitution of India for issuing a writ in the nature of **HABEAS CORPUS** for directing the respondents to release the detenues enumerated in the annexed list (**ANNEXURE P-2**) and other persons, picked-up at midnight by Police across several districts of Haryana, in the raids from midnight till 5 A.M. w.e.f. 24.11.2020 to till date, on the pretext of proposed agitation by farmers at Delhi against the state policies, clearly in violation of the Article 19, 21 and 22 of the Constitution of India.

**APPOINT OF WARRANT OFFICERS** at the state expenses to visit all Police Stations/Jails of the State of Haryana, where the innocent farmers have been locked-up; without any ground of arrest and without commission of any offence by detenu; which is clearly in violation of the Article 19, 21 and 22 of the Constitution of India. And/or

Direct the Respondents to grant compensation to the persons illegally arrested by Police in violation of the Article 22 and relevant provisions of the CrPC.

Any other order or direction which this Hon'ble court may deem fit in the facts and circumstances of the case

**RESPECTFULLY SHOWETH:**

- 1.** That The Petitioner is a group of citizens residing in Haryana. Therefore, the Petitioner being a group of citizen of India is entitled to invoke the jurisdiction of this Honourable Court under Article 226/227 of the Constitution of India.
- 2.** That the Petitioner is an advocacy group formed by the farmers of various parts of Haryana; for the welfare of farmers; set-up under the registered Trust, founded and run by the group of

*Advocates of Hon'ble Supreme Court, High Courts, for the propagation and protection of the FUNDAMENTAL RIGHTS, FUNDAMENTAL DUTIES & DIRECTIVE PRINCIPLES OF STATE POLICY; envisaged under the Constitution of India. The issues being raised in the present petition have direct as well as indirect impact on the interests of the members/farmers of the petitioner group. Therefore, being direct beneficiaries of the relief sought in the petition; as per the PIL Rules; the Petitioner is not allowed to file PIL petition. The true copy of the requisite resolution, registration certificate; along with the aims and objects of the Trust is annexed herewith as **ANNEXURE P-1.***

3. The present petition is actuated by the illegal midnight raids and illegal custody of farmers; by Haryana Police to sabotage the peaceful protest planned by the farmers' organisations against the three contentious farm laws - viewed as anti-farmer. The houses of farmers' leaders were raided at unearthly hours between 1 a.m. and 3 a.m. as if they are wanted criminals That various farmer organisation from different States have given call 'Delhi Chalo' for November 26 and 27, to march towards Delhi to continue their protest against the three contentious farm laws - viewed as anti-farmer - after several rounds of failed talks with representatives of the central government. At least 500 farm outfits from across the country have extended the support to "Delhi Chalo" call by All India Kisan Sangharsh Coordination Committee (AIKSCC) under which agitating farmers will reach the National Capital on November 26-27 to press the central government to scrap the contentious legislations. However, the government wants to stifle the voice of people by arresting and detaining them under preventive measures. The innocent farmers were picked-up at midnight from their houses without any ground of arrest and without commission of any offence, which is clearly in violation of the Article 19, 21 and 22 of the Constitution of India. The Petitioner has received information of illegal custody and detention of farmers from the different part of Haryana. The list of persons arrested by Police supported by different sources is annexed herewith as **ANNEXURE P-2.**

4. That the reputed and established print media as well as electronic media including ‘**The Hindu**’, ‘**The Tribune**’, NDTV, ‘**Indian Express**’ etc. have also prominently published with headlines that: “**In a post-midnight clampdown in several districts, including Jhajjar, Hisar, Sirsa, Karnal and Bhiwani, police teams mounted raids at the houses of farmer leaders**” “**Ahead of ‘Delhi chalo’ drive, cops pick up farmer leaders in midnight raids**”  
The true Copies of the media stories are annexed herewith attached as ANNEXURE P-3.
5. That the paramount question is: If anybody does not fall within the line of the government or wants to protest against a particular policy of the Govt., will that be a ground to arrest that person?
6. That none of the persons were arrested after observing the safeguards directed by DK Basu’s case and given statutory recognition now. The estimated numbers of illegally picked persons by Police are more than 200 persons throughout the State, though the state can reveal the exact figures. The arrested persons had been sent to different jails and even no information has been given to the relatives of the persons so arrested, which is mandatory in view of article 22 of the Constitution of India and section 50-A of the Cr. P.C.; which requires the person making arrest to inform about the arrest to the family members. Section 50A of the code is reproduced herein below for the perusal of this Hon’ble Court.

**"50A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.-**

***(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.***

***(2) The police officer shall inform the arrested person of his rights under subsection (1) as soon as he is brought to the police station.***

(3) *An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.*

(4) *It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and subsection (3) have been complied with in respect of such arrested person."*

However, none of the requirements were complied. No information whatsoever was provided. No one is aware that who has been arrested for what offence and where they are lodged.

7. That some persons managed to get the information about the whereabouts of their relatives, but even they were not aware of the grounds of arrest. Some persons were produced before executive magistrate, thus it appears that possibly they were arrested under section 107/151 Cr. P.C. These arrests are nothing but an abuse of process of law as no procedure was followed. Under section 107 Cr. P.C. Executive Magistrate can ask a person to show cause why he should not be ordered execute a bond for keeping the peace for such period as he may deem fit. Thereafter the Executive Magistrate acting under section 107 Cr. P.C. has to pass an order under section 111 Cr. P.C. stating the complete details as enumerated in the section. Thereafter the Executive Magistrate has to conduct an inquiry under section 116 Cr. P.C. to ascertain the truth of information received. It is only thereafter, that the Executive Magistrate can make an order under section 117 Cr. P.C. to give security. The section 107, 111,116 and 117 are being reproduced herein below for the kind perusal of this Hon'ble Court.

**107. Security for keeping the peace in other cases.**

(1) *When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of' the peace or disturb*

*the public tranquility and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond 1[with or without sureties] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*

*(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.*

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**111. Order to be made.**

*When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.*

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**116. Inquiry as to truth of information.** *(1) When an order under section 111 has been read or explained under section 112 to a person in court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons of, warrant, issued under section 113 the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.*

(2) *Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons case.*

(3) *After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of' breach of the peace or disturbance of the public tranquility or the Commission of any offence or for the public safety, may, for reason to be recorded in written direct the per son in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behavior until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:*

*Provided that –*

(a) *No person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behavior;*

(b) *The conditions of such bond, whether as to the amount thereof or as to the provisions of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.*

(4) *For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the Community may be proved by evidence of general repute or otherwise.*

(5) *Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries, as the Magistrate shall think just.*

(6) *The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs*

*Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.*

(7) *Where tiny direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.*

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**117. Order to give security.**

*If, upon such inquiry, it is proved that it is necessary for keeping, the peace or maintaining good behavior, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:*

*Provided that-*

(a) *No person shall be ordered to give security of a nature different from, or of air amount larger than, or for a period longer than, that specified in the order made under section 111.*

*(b) The amount of every, bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;*

*(c). When the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.”*

Thus from the reading of the sections reproduced above it is clear that no person can be asked to furnish the security bond without conducting an inquiry.

8. That under section 151 Cr. P.C. Police has the power to arrest a person to prevent the commission of cognizable offence. The object of the section 151 Cr. P.C. is to prevent to the commission of cognizable offence and person so arrested is not an offender but the arrest to prevent him from doing so in near future. That the farmers' agitation is proposed on dated: 26 and 27 November, in such situation one wonders how the Police has reached to the conclusion that the detenues will commit offence and what offence will be committed. Even otherwise, the person so arrested under section 151 Cr. P.C. can not be detained in custody for a period exceeding 24 hours unless required in some other case. The section 151 Cr. P.C. is herein below for the kind perusal of this Hon'ble Court.

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**151. Arrest to prevent the commission of cognizable offences.**

*(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.*

*(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.*

This Hon'ble Court while dealing with similar matter in "**D.S.Gill, Chairman, Punjab Human Right Organization Vs. State of Punjab**", 1996(3) R.C.R. (Crl.)397, held that such a detention without following the proper procedure would be illegal and thus awarded compensation of Rs. 5000/-to the detenu.

9. That for the smooth functioning of democratic state is very much required that the state power should allow the space to dissenting views. No democracy can survive if the state will not allow its people to have dissenting view and to express its agony by protesting against the state policy in peaceful manner and sometimes it may have to restrain itself, even in adverse conditions. With this attitude of pressing the dissent, snubbing the protests, the people may lose their belief on the method of peaceful protests. If at all this situation arises, it may create anarchism in the whole society. On the one hand the government is asking the rebel groups to lay down there weapons and on the other hands they are not allowing their citizens to make peaceful protests. Even if the state has some apprehensions regarding law and order, it cannot violate the law and take recourse to illegal methods.
10. That the police, in order to harass the people and with intention to arrest them, is raiding the houses during midnights. There is no justification in the raiding the house of any person, especially when he is not involved in any cognizable offence.
11. That there is no alternative remedy available to the petitioner, except to approach this Hon'ble court by way of present criminal writ petition

#### **PRAYER**

In view of the facts and circumstances referred above it is respectfully prayed that this Hon'ble Court may be pleased to:

- (i) Issue writ in the nature of **HABEAS CORPUS** for directing the respondents to release the detenues enumerated in the **ANNEXURE P-2** and other persons, picked-up at midnight by Police across several districts of Haryana, in the raids from

midnight till 5 A.M. w.e.f. 24.11.2020 to till date, on the pretext of proposed agitation by farmers at Delhi against the state policies, clearly in violation of the Article 19, 21 and 22 of the Constitution of India.

- (ii) Appoint warrant officers at the state expenses to visit all Police Stations/Jails of the State of Haryana, where the innocent farmers have been locked-up; without any ground of arrest and without commission of any offence by detenu; which is clearly in violation of the Article 19, 21 and 22 of the Constitution of India. And/or
- (iii) Direct the Respondents to grant compensation to the persons illegally arrested by Police in violation of the Article 22 and relevant provisions of the CrPC.
- (iv) Pass any other order or direction which this Hon'ble court may deem fit in the facts and circumstances of the case
- (v) Exempt from filing of the certified copies of Annexure P-1 to P-3.
- (vi) Award the cost of this petition to the petitioner.

**(PARDEEP KUMAR RAPRIA)**

**(HARINDER PAL SINGH ISHAR)**