

Court No. - 42**Case :-** CRIMINAL MISC. WRIT PETITION No. - 2350 of 2021**Petitioner :-** Shah Faisal**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Adeel Ahmad Khan, Mohd. Samiuzzaman Khan, Saddam Husain**Counsel for Respondent :-** G.A., Ram Bahadur Singh**Hon'ble Mahesh Chandra Tripathi, J.****Hon'ble Prashant Kumar, J.**

1. Heard Sri Adeel Ahmad Khan, learned counsel for the petitioner; Sri G.P. Singh, learned A.G.A.-I for the State respondent nos.1, 2 and 3 and Sri Ram Bahadur Singh, learned counsel for the respondent nos.4 and 5.

2. The instant writ petition is preferred under Article 226 of Constitution of India seeking following principal reliefs:-

"A. Issue a writ, order or direction in the nature of mandamus directing the Superintendent of Police, District Maharajganj (respondent no.2) to take legal action against the respondent nos.4 & 5, including the disciplinary proceedings etc.

B. Issue a writ, order or direction in the nature of mandamus directing the Station House Officer, Police Station Shyam Deorwa, District Maharajganj (respondent no.3) to register F.I.R. against respondent no.4 & 5 for committing custodial torture of petitioner by confining him in Police custody without any rhyme and reason.

C. Issue a writ, order or direction in the nature of mandamus directing the State Government (respondent no.1) to compensate the petitioner for the inhuman act done by the police personnel."

3. The parties are ad idem that the case may be finally heard and decided at this stage. Accordingly, with the consent of the learned counsel for the parties, this Court proceeds to decide the matter at this stage under the Rules of this Court.

4. The petitioner claims to be resident of Village Tarkulwa, Bhatgaon, Police Station Shyam Deorwa, District Maharajganj. He is running a petty shop in the said village for his livelihood. It is alleged that in the late evening hours of 14.02.2021, when the petitioner was present at his shop, two constables of Police Outpost Partawal came there and took him to the outpost on the pretext that the Incharge of the outpost had called him. It is also alleged that the respondent nos.4 and 5, who were posted as Sub Inspector (Incharge Police Outpost Partawal) and Police Constable

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at the outpost respectively, had threatened the petitioner and asked Rs.50,000/- from his father, otherwise he will be falsely implicated in a criminal case. Once the petitioner had shown his inability to fulfill their illegal demand, he was beaten up in police lock-up.

5. It is also claimed that as the petitioner received certain grievous injuries, he went on 17.02.2021 to lodge an FIR against the respondent nos.4 and 5 but the police officials of the concerned Police Station had refused to register the FIR. As such, he had no other option except to undergo medical examination about his injuries at Community Health Centre, Partawal on 18.02.2021 at around 11 AM. Later on, he made a complaint at IGRS Portal on 18.02.2021 and also moved an application to the Superintendent of Police, District Maharajganj on 19.02.2021 but despite the aforesaid applications moved by the petitioner, no action has been taken against the respondent nos.4 and 5 till date.

6. Learned counsel for the petitioner in this backdrop submits that the petitioner is a law abiding and peace loving person. He is not wanted in any criminal case but the respondent nos.4 & 5 called him and tortured in police custody. While pressing the writ petition, reliance has been placed upon the judgement passed by the Apex Court in **Joginder Kumar v. State of Uttar Pradesh** (1994) 4 SCC 260 in which it was observed that there is a need to strike a balance between the individual human rights and societal interests in combating crime by using a realistic approach. Reliance has also been placed upon the judgments of Apex Court in **Bhagwan Singh vs. State of Punjab** 1952 AIR 214.

7. Per contra, Sri G.P. Singh, learned A.G.A.-I has vehemently opposed the instant writ petition and submitted that the detailed counter affidavit had been filed, wherein the alleged incident had been refuted. The petitioner had made false and exaggerated claims with regard to illegal detention/torture. There is no clear or incontrovertible evidence about custodial torture nor any medical report of any injury or disability inflicted upon the petitioner.

8. Sri Ram Bahadur Singh, learned counsel for the respondent nos.4 and 5 states that detailed counter affidavit on behalf of the said respondents had been filed in the registry on 29.01.2024 but the same is not available on record. The office is, therefore, directed to trace out the counter affidavit and place it on record. Photocopy of the counter affidavit is provided to the Court and the same has been acknowledged by learned counsel for the petitioner. The photocopy of the counter affidavit is also taken on record.

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9. Sri Ram Bahadur Singh, learned counsel for respondent nos.4 and 5 further apprises to the Court that initially, one Rishikesh Bharti son of Sri Ved Prakash Bharti had moved a complaint on 13.02.2021, wherein he has alleged that the petitioner had brutally assaulted him with iron rod and he had sustained injuries. He submits that Rishikesh Bharti belongs to Scheduled Caste community and once the complaint was entertained and later on the petitioner was brought to the police station. The same was also mentioned in G.D. No.45 dated 16.02.2021. Even though after inquiring the matter and interrogation the petitioner was released within few hours and his custody was handed over to his father namely Fakaruddin. Copy of the handing over (Supurdginama) is also appended alongwith the counter affidavit as Annexure No.3 to the counter affidavit.

10. Sri Ram Bahadur Singh further submits that even Ved Prakash Bharti, who is father of Rishikesh Bharti, had also lodged a first information report on 18.02.2021 regarding the alleged incident of 13.02.2021 in which the petitioner was named, which was registered as Case Crime No.37 of 2021 under Sections 323, 504, 506 IPC and under Section 3 (1) (Dh) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S. Shyam Deorwa, District Maharajganj. Even the informant namely Rishikesh Bharti was also medically examined by the Incharge Medical Officer, CHC, Partawal on 18.02.2021, which also demonstrates that on account of assault made by the petitioner, he had received total five injuries. He further submits that as soon as the petitioner made a complaint regarding the alleged incident on the IGRS portal then the Superintendent of Police, Maharajganj had directed for the fact finding Inquiry. After completing the fact finding enquiry, the Circle Officer, Sadar, Maharajganj (Inquiry Officer) had submitted the enquiry report before the Superintendent of Police, Maharajganj on 04.02.2021. Accordingly, a show cause notice was also given to the respondent no.4 on 25.03.2021 with direction to file an objection within 15 days' time. Finally, after considering the entire material available on record, the Superintendent of Police passed an order on 07.08.2021 and discharged the show cause notice dated 25.03.2021. Even though the said discharge order had also been brought on record as Annexure No.7 to the counter affidavit filed by the respondent nos.4 and 5 but till date the same has not been disputed or assailed and as such, for all practical purpose, in absence of any challenge, the same has attained finality. In support of his submission, he has also placed reliance on the judgement passed by the Apex Court in **Sube Singh vs. State of Haryana**

11. Heard rival submissions and perused the record.

12. We have proceeded to examine the record in question and find that admittedly, the complaint was made by one Ved Prakash Bharti, who is the father of Rishikesh Bharti, wherein it was alleged that the petitioner had brutally assaulted him with iron road on 13.02.2021. Even the FIR of the said incident was also lodged on 18.02.2021, which was registered as Case Crime No.37 of 2021 under Sections 323, 504, 506 IPC and under Section 3 (1) (Dh) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S. Shyam Deorwa, District Maharajganj. Even the son of the informant was also medically examined by the Incharge Medical Officer, CHC Partawal on 18.02.2021, wherein it was found that the injured Rishikesh Bharti had received total five injuries. Therefore, at this stage it cannot be presumed that there was no such incident in which the petitioner was not indulged. Once the complaint was made on the IGRS portal and it was received by the concerned Superintendent of Police, thereafter promptly a show cause notice was given to the respondent no.4, who had duly responded to the notice on 19.05.2021 and later on, the said notice was discharged by the Superintendent of Police vide an order dated 07.08.2021. It is admitted position that the discharge order dated 07.08.2021 is uncontroverted.

13. It is well settled law that in the case of custodial torture, which would amount to violation of the rights guaranteed under Article 21 of Constitution, the proceeding under Article 32 or 226 of Constitution can be initiated only when there is a substantial evidence of custodial torture. It may not be prudent to accept the claims of human rights violation by persons having criminal records in a routine manner for awarding compensation. If this is allowed then it would lead to a wrong trend and every criminal arrested or interrogated would turn up and file a petition seeking heavy compensation against the action of the police officials. Further, if such proceedings are encouraged it will open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation.

14. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned above are satisfied. The degree of proof required in criminal prosecution relating to such matters has been softened by Hon'ble Supreme Court in **State of M.P. V. Shyamsunder Trivedi**, (1995) 4 SCC 262; **Shakila Abdul Gafar**

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Khan v. Vasant Raghunath Dhoble, (2003) 7 SCC 749 and **Munshi Singh Gautam v. State of M.P.** (2005) 9 SCC 631.

15. Keeping this in mind the Court while zealously protecting the fundamental rights of those, who are subjected to any kind of torture in the custody, should also stand guard against all false, motivated and frivolous claims in the interest of the society and to enable the police to discharge their duties fearlessly and effectively. Every arrest and detention does not amount to custodial torture.

16. It is the duty of the Court that before entertaining such kind of petitions, for compensation and any action to be taken against the police officials, for judicial torture, the Court has to pose to itself the following questions: (a) whether there is violation of any human rights or violation of Article 21, which is patent and incontrovertible; (b) whether such violation is gross and of such magnitude to shock the conscience of the court and (c) whether there is sufficient evidence to prove that there was custodial torture. When such allegation is not supported by any medical report or other corroborative evidence, the Court ought not to entertain such kind of proceeding.

17. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. The Court has been receiving complaints about violation of human rights. The violation of human rights has to be balanced with the implementation of law. There has to be a realistic balance between individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other.

18. Mr. Justice Cardozo, when he wrestled with a similar task of balancing individual rights against society's rights had rightly held that the exclusion rule was bad law, that society comes first, and that the criminal should not go free. In **People v. Defore** 242 NY 13, 24 : 150 NE 585, 589 (1926) Mr. Justice Cardozo observed:

"The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the Aclams case (*People v. Adams* 150 NE 585) strikes a balance between opposing interests. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass."

19. Similar statement was made by Justice L. Hand in U.S. Circuit

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Court of Appeal in the matter of **re Fried et al** 161 F 2d 453 (1947), wherein, he observed:

"The protection of the individual from oppression and abuse by the police and other enforcing officers is indeed a major interest in a free society; but so is the effective prosecution of crime, an interest which at times seems to be forgotten. Perfection is impossible; like other human institutions criminal proceedings must be a compromise."

20. In the matter of **Nandini Satpathy v. P.L. Dani** (1978) 2 SCC 424, quoting Lewis Mayers the Apex Court held:

"The paradox has been put sharply by Lewis Mayers:

'15. To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right.' "

23. We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since *Miranda v. Arizona*, 384 US 436 there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers. Currently, the trend in the American jurisdiction according to legal journals, is that 'respect for (constitutional) principles is eroded when they leap their proper bounds to interfere with the legitimate interests of society in enforcement of its laws..."

21. We have also occasion to peruse the record and the judgment of the co-ordinate bench in the case of **Shiv Kumar Verma and another versus State of U.P. and 3 others** in Criminal Misc. Writ Petition no. 16386 of 2020 as well as the case of **Ramesh Chand Gupta @ Chandu versus State of U.P.** in Criminal Misc. Writ no. 4252 of 2022 wherein the Coordinate benches of this court has place reliance on the policy passed by the State Government dated 23.03.2021 and directed the state government to compensate the petitioners who were subject to illegal detention .The relevant extract of the above policy is reproduced as below:-

"12- भारत के संविधान के अनुच्छेद-21 का उल्लंघन करते हुये किसी व्यक्ति की अवैध हिरासत किये जाने के लिए उत्तरदायी अधिकारी के विरुद्ध दण्डात्मक कार्यवाही एवं पीडित व्यक्ति को मुआवजे के भुगतान के संबंध में दिशा-निर्देश-

(1) भारत के संविधान के अनुच्छेद- 21 का उल्लंघन करते हुये किसी अवैध हिरासत किये

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जाने के लिए अनुशासनिक प्राधिकारी द्वारा जांच में दोषी पाये जाने पर उत्तरदायी अधिकारी के विरुद्ध उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1999, दि आल इंडिया सर्विसेज (डिसिप्लिन एंड अपील) रूल्स, 1969 एवं उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड और अपील) नियमावली, 1991 (यथा संशोधित) में संगत नियमों के अंतर्गत दण्डात्मक कार्यवाही की जायेगी।

(2) अनुशासनिक प्राधिकारी द्वारा अपनी जांच रिपोर्ट 03 माह में अथवा संगत नियमावली में यथा उल्लिखित समयानुसार प्रस्तुत की जायेगी।

(3) यदि किसी नागरिक की अवैध रूप से हिरासत प्रमाणित पायी जाती है तो पीड़ित व्यक्ति को ₹0-25,000/ की धनराशि का भुगतान मुआवजे के रूप में किया जायेगा।

इस सम्बन्ध में समस्त जिला मजिस्ट्रेट, उसके अधीनस्थ समस्त कार्यपालक मजिस्ट्रेट्स तथा विशेष कार्यपालक मजिस्ट्रेट्स से यह अपेक्षा की जाती है कि दण्ड प्रक्रिया संहिता में उन्हें प्रदत्त की गयी शक्तियाँ, उनके क्षेत्राधिकार में शांति व्यवस्था एवं लोक प्रशांति बनाये रखने के लिए है। अतः इनका पालन सदैव गुण-दोष के आधार पर युक्तियुक्त न्यायिक मस्तिष्क का प्रयोग करते हुए, विधि एवं निर्धारित प्रक्रिया के अनुसार किया जाए, ताकि आमजन को संविधान से प्राप्त मौलिक अधिकार संरक्षित रहें।

कृपया उक्त दिशा-निर्देशों का सख्ती से अनुपालन सुनिश्चित किया जाए।"

22. It is trite law that the Court may award compensation under Article 226 of Constitution of India in cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established or is incontrovertible but at the same time, it is also paramount responsibility of the Court to ensure that in case there is no evidence of custodial torture to a person, except his own statement and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated, fully or in part, the Court may not award compensation as a public law remedy under Article 226 and in such situation appropriate remedy is to relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

23. In the instant matter, it cannot be presumed that the petitioner is an innocent person. In fact, there was an FIR lodged against him, wherein he was accused of beating one Rishikesh Bharti by a rod. The petitioner had made a complaint in IGRS portal and the

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SSP had initiated the inquiry. After the inquiry nothing was found against the respondent nos.4 and 5 and accordingly, they were discharged, which has not been assailed by the petitioner and the entire enquiry proceeding initiated against the respondent nos.4 and 5 has attained finality. More over, there is no violation of any human rights of the petitioner which is patent and incontrovertible, neither it can be said to be gross violation. Therefore, it cannot be said that the law enforcement agencies had gone overboard in repressing the crime in the society.

24. In the instant case, there is no clear or incontrovertible evidence about custodial torture of the petitioner. In absence of any such material, we do not find that the instant matter falls in such category, wherein this Court may accord any compensation or any other relief, as accorded by this Court in the case of **Shiv Kumar Verma** (supra) and **Ramesh Chand Gupta** (supra). Therefore, we are not inclined to accord any such compensation or any other relief in the light of the Supurdginama, which was prepared on 16.02.2021 and the same was duly endorsed by the petitioner himself, wherein he himself had accepted that the petitioner alongwith his father was called on 16.02.2021 for an enquiry and after the enquiry, he went alongwith his father.

25. For the aforesaid reasons, the writ petition is dismissed.

Order Date :- 15.10.2024

RKP