

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 31.10.2007

W.P(Crl.) No. 264 of 2007

25.02.2008

Sanjeev Kumar Singh

.....Petitioner Through :

Mr.Sanjeev Singh, Advocate

Versus

State of NCT of Delhi and Respondents

others

Through : Ms.Rajdipa Behura,Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? YES.
2. To be referred to the reporter or not ? YES.
3. Whether judgment should be reported in Digest ? YES.

JUDGMENT

This petition has been filed by the petitioners under Article 226 of the Constitution of India with the prayer that proceedings against the petitioners under sections 107/151 Cr.P.C registered vide DD No.22A dated 3.2.2007 be quashed. The other prayer is that this Court should give directions in the nature of mandamus for the registration of FIR under section 365/384/511/327/342/468/471/193/194/195 IPC and under the Prevention of Corruption Act and to give direction to investigate this matter. Petitioners also prayed for grant of compensation of Rs.10 lakhs and for issuance of guidelines for the police to conduct proceedings under sections 107/151 Cr.P.C.

2. It is submitted by the petitioners that the petitioners were friends and they were booked by Delhi Police under sections 107/151 Cr.P.C. for fighting with each other. While as a matter of fact no fight took place between the petitioners. The petitioner No.1 complained to PCR at 7.24 p.m. on 3.2.2007 as the said petitioner was being threatened by some police persons and an attempt was being made to extort money. The policemen in order to save their skin and to teach a lesson to the petitioners, registered a Kalandra under sections 107/151 Cr.P.C. and both of them were taken into custody. Petitioners were taken to Jagjiwan Ram Hospital where policemen pressurized the Doctors to give a false report that petitioner No.1 was smelling of alcohol. The police illegally detained the petitioners in lockup of PS Samaipur Badli and threatened and mistreated them; they were not allowed to use mobile phones. A request for their re-examination at AIIMS was turned down. Petitioners were produced before the ACP J.S. Vaid who was working as Special Executive Magistrate (for short ?SEM?) on 4.2.2007 at 2.00 p.m. No copy of Kalandra was supplied to the petitioners. The petitioners produced sound sureties alongwith bail bonds before him, but instead of accepting the surety bonds sent the surety bonds to SHO PS Samaipur Badli for verification for 8.2.2007. Learned SEM did not pass any order for bail and did not even specify the surety amount and he only passed the order remanding the petitioners to JC till 17.2.2007. The counsel for the petitioners offered to give alternative sound sureties having proof of residence and identity with RC of the car and ready to furnish FDR of more than Rs.1 lakh, but the same was not even considered by the SEM. Learned counsel himself also offered to stand surety but SEM did not budge and did not consider even taking interim bail bond and the petitioners were sent to jail. The SEM on 4.2.2007

had passed only following order:- Produced from P.S. heard remanded to JC on 17.2.07. However, later on a typed order was substituted for above order containing surety order.

3. Petitioners were sent to Tihar Jail on 4.2.2007. On 5.2.2007 counsel for the petitioners moved two applications for withdrawal of earlier sureties and fresh sureties, and the bail bond was accepted only on 5.2.2007 for an amount of Rs.15,000/- and not for Rs.5000/- as recorded by the SEM in his fabricated order dated 4.2.2007.

4. The status report filed by the respondent shows that on 3.2.2007. Head Constable Krishan Kumar alongwith Constable Virender Kumar were on the petrolling duty in the area of PS Samaipur Badli. When they reached near wine shop at CW Block, Sanjay Gandhi Transport Nagar they found a gathering of there and somebody was shouting. They found two persons were fighting with each other; abusing and threatening each other under the influence of liquor. Head Constable separated them with great difficulty. The two persons were the petitioners and their addresses of Rohini and Samaipur Badli were given in the report itself. It is submitted that the petitioner Sanjeev was threatening petitioner Dalip Gupta that his brother was a magistrate and local police salutes him, and that he should bring liquor for him otherwise he will finish him. Despite intervention, they continued quarreling. Both were non- cooperative at the time of their medical examination. They were produced before the SEM on 4.2.2007 and SEM directed issuance of notice u/s 107/151 to show cause as to why petitioners should not be ordered to execute personal bond in the sum of Rs.5000/- with one surety each in the like amount to keep peace and notice this effect was given to them. The petitioners desired to contest the same and SEM ordered them to execute personal bond in the sum of Rs.5000/- with one surety of the like amount. As they failed to execute their bail bonds as ordered, they were remanded to JC till 17.2.2007. On 5.2.2007 sureties for petitioners appeared and executed their bail bonds which were accepted and release warrants were prepared.

5. It is also stated that petitioners filed complaints against police officials. The complaints were enquired into by the vigilance branch and found to be false.

6. It is apparent from perusal of the record that both the petitioners had permanent residential addresses of Delhi. They were apprehended by the police under sections 107/151 Cr.P.C. on the charge of abusing, threatening and quarelling with each other. Record shows that the SEM though passed an order for release of the petitioners on 4.2.2007 on executing of personal bond of Rs.5000/- with one surety but the bail bond accepted by the SEM was of Rs.15,000/-. Record also shows that the bail bonds were accepted on 5.2.2007.

7. The status report filed by the police does not explain as to how when the surety demanded was for Rs.5000/-, the bail bond accepted by SEM was for Rs.15000/-. The allegation of the petitioners that no order for bail was made on 4.2.2007 and the petitioners were sent to JC on 4.2.2007 without passing any bail order and their bail bonds were not entertained on that day are therefore, well founded. The order dated 4.2.2007 which requires the petitioners to execute bail bond for Rs.5000/- was not actually in existence and seem to have been manipulated later on. Had this order been in existence, SEM would have asked and accepted the sureties of only Rs.5000/- and not of Rs.15000/-.

8. The Petitioner has also alleged manipulation of MLCs and other papers. A perusal of MLC shows that Mr. Sanjeev Kumar was examined by doctor at 9.00 p.m. There is over-writing on time of Dalip Gupta where 9 seems to be converted to 8. The plea taken in the status report that there was inadvertent error in writing of the time of medical examination of both the petitioners, does not seem to be true. There was no reason for doctor to put two different times in the MLCs. More over two MLCs show that MLC of Sanjeev Kumar was prepared on a printed proforma of the Hospital having different columns of date and time, while MLC of Dalip Gupta is on a different form. It is also seen that the remarks that patient was non-cooperative for medical examination and patient misbehaved

with the Doctor and staff, were inserted in the MLC later on and they do not form part of the same writing and same prescription. This only shows that MLC and the examination reports were got prepared by the police in order to fortify its case.

9. I also find no reason why the bail bonds should not have been accepted by the SEM. Both the petitioners are permanent residents of Delhi, their addresses were known to the police as the same form part of the report of the police. The search memo shows police had recovered PAN card from one of the petitioners and visiting cards from other petitioners. Sections 107/151 were incorporated in the Cr.P.C. to give powers to police to prevent breach of peace. These sections were not incorporated to illegally detain person and harass them or to encroach upon their fundamental rights and to keep the people in illegal confinement. The case shows a high handedness of the police and the SEM concerned. The petitioners were kept in illegal confinement because of the SEM's illegal action of not accepting the bail bond and not passing the bail order on 4.2.2007 and subsequently manipulating the order.

10. I consider that it is a fit case where a CBI enquiry should be done into the entire episode and the officials responsible for illegal detention of the petitioners should be booked and proceeded according to law.

11. Accordingly, the writ petition is allowed with the following directions:-

- (i) CBI is directed to register a case in respect of the allegations made by the petitioners in the writ petition. A copy of the writ petition alongwith a copy of this order be sent to the CBI, who shall investigate the matter within a period of 120 days and submit its report to the Court of concerned Metropolitan Magistrate.
- (ii) Petitioners are granted compensation of Rs.25,000/- each to be paid by the State for their wrongful confinement by the State between 4.2.2007 and 5.2.2007, when no bail order was passed by the Special Executive Magistrate and their bail bonds were not accepted.
- (iii) (The proceedings under sections 107/151 Cr.P.C. initiated against the petitioners are hereby quashed.

The writ petition stands disposed of accordingly.

February 25, 2008

SHIV NARAYAN DHINGRA,J.