

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE
DIVISION BENCH : HON'BLE SHRI JUSTICE S. C. SHARMA
& HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA

Writ Petition No.26923/2019

Kamlesh S/o Husan

v/s

The State of Madhya Pradesh & Others

Counsel for the Parties : Shri Devendra Chouhan, learned counsel for the petitioner.

Shri R.S. Chhabra, learned Additional Advocate General along with Shri Mudit Maheshwari, learned counsel for the respondent / State.

Whether approved for reporting : Yes

Law laid down The writ of *habeas corpus* is a great constitutional privilege and has been described as security of civil liberty. It provides a remedial procedure in case of illegal detention and in case, illegal detention is proved, the person, who has been detained, is entitled for liberty keeping in view Article 21 of the Constitution of India. He is not only entitled for liberty but is also entitled for compensation. The compensation can be awarded while exercising writ jurisdiction under Article 226 of the Constitution of India.

Significant paragraph numbers : 11 to 25

ORDER

(Delivered in open Court on this 10th Day of February, 2020)

(S.C SHARMA)
J U D G E

(SHAILENDRA SHUKLA)
J U D G E

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Writ Petition No.26923/2019

**Kamlesh S/o Husan v/s The State of Madhya Pradesh & Others
Indore, dated 10.02.2020**

Per : S.C. Sharma, J:

Shri Devendra Chouhan, learned counsel for the petitioner.

Mr R.S. Chhabra, learned Additional Advocate General along with Shri Mudit Maheshwari, learned counsel for the respondent / State.

The petitioner before this Court, who is Kamlesh S/o Husan, has filed this present petition under article 226 of the Constitution of India for issuance of a writ in the nature of *Habeas Corpus*.

02. The petitioner's contention is that his father Husan S/o Ramsingh has been illegally detained by the State who is aged about 68 years. It has been further stated that the detainee is an illiterate tribal. He has been forcibly picked up from his house by the police, produced before the Magistrate and sent to Jail. The petitioner, who is again a tribal is an illiterate person and the moment his father was taken into custody by the police, rushed to the police station and he has informed that his father has been convicted in respect of an offence under Section 302 of the Indian Penal Code and has been sentenced in Sessions Trial No.41/76 for life imprisonment and he has been sent to jail.

03. Learned counsel for the petitioner has stated before this Court as well as averments were made on affidavit in the writ petition that in respect of Sessions Trial No. 41/76 one Husna S/o Ramsingh was a convict who was also

known as Bada Husna. He was released on parole and later on died on 10-09-2016. It has been further stated that in place of Husna, father of the petitioner was arrested, produced before the Magistrate and sent to Jail. This Court, as it was alleged that an innocent tribal has been lodged in jail without there being any fault on his part, has issued notices and has directed the State Government to file a reply.

04. The State Government has filed a reply which is duly supported by an affidavit of Shri Manoharsingh Baria, Sub Divisional Officer (Police) and in the affidavit submitted by the Sub Divisional Officer (Police), it has been stated that Husna was convicted in Sessions Trial No. 41/1976. He was sentenced to undergo life imprisonment. He was released on bail and as he did not report back, a warrant of arrest was issued. The warrant of arrest is brought on record as Anenxure-R/1 dated 15-10-2019. He has stated that on the basis of warrant of arrest, the Station House Officer, Bar has arrested Husna and he was produced before the Chief Judicial Magistrate Dhar and the Chief Judicial Magistrate Dhar has issued a jail warrant and he has been sent to jail. Letter dated 18-10-2019 is also been brought on record in support of the aforesaid averments. It has been further stated by the State Government that as the father of the petitioner was sentenced to undergo life imprisonment, he has been sent to Central Jail, Indore to serve the remaining sentence vide order dated 18-10-2019. The Sub Divisional Officer (Police) has submitted a report in the matter stating categorically that the person who has been

sent to Jail is Husana who was convicted in Session Trial No. 41/1976.

05. This Court after going through the reply, as the petitioner has stated categorically before this Court that Husan and Husna are two different persons, by an order dated 30-01-2020 has directed the Principal Secretary Home Department to conduct an inquiry based upon the finger prints and other materials to ensure whether an innocent person has been sent to jail or not or it is the father of the petitioner who was convicted in Sessions Trial No. 41/1976. The order passed by this court dated 30-01-2020 reads as under :-

“The petitioner before this Court, who is son of Husan has filed this present petition stating that his father has been illegally detained even though he has not committed any crime nor has been convicted in any criminal case.

The facts of the case, as stated in the writ petition reveal that Husan, father of the present petitioner is aged about 68 years and is a resident of District Dhar. One Husna S/o Ramsingh was convicted for an offence under Section 302 of IPC in S. T. No.41/1976 and he was sent to jail. The father of the present petitioner and the person who was convicted are step brothers. Husna was sent to jail and he was released on parole in the year 1985 and as stated in the writ petition, he expired. Thereafter, as Husna did not report back to the jail, the father of the present petitioner, as he is having a similar name has been arrested and lodged in jail.

Learned counsel for the petitioner has also filed a death certificate in respect of Husna and his contention is that Husna is no more and the father of the petitioner has been sent to jail in place of Husna.

In order to find out whether the correct person is in jail or not, the respondent/State was directed to file a reply. The respondent/State has conducted an enquiry and a reply has been filed in the matter and they have stated that the same person

who was convicted is in jail. The reply reveals that some fact finding enquiry was conducted in the matter. The statement of witnesses were recorded and the Investigating Officer has arrived at a conclusion that the same person who was convicted is in jail and the person who has died is actually Husna S/o Kalsingh.

In order to find out whether the same person is in jail or some other person is in jail in respect of Husna, the proper course of action is to conduct an enquiry based upon the fingerprints examination as well as other comparable identifying marks of the two persons Husan and Husna. At the time of FIR is lodged and a man is arrested, his fingerprints are taken by the police authorities and when he is sent to jail, again in jail fingerprints are taken by the jail authorities and therefore, the Principal Secretary, Home Department is directed to conduct an enquiry. The enquiry shall be conducted on the basis of fingerprints of the person who was arrested and convicted in S. T.No.41/1976, the fingerprints obtained for the first time of Husna when he was lodged in jail and the fingerprints of the person who is at present in jail.

As it is a case of alleged illegal detention, the enquiry be concluded within seven days from today by deputing special messengers and a report be submitted before this Court positively on 10.02.2020. The enquiry report shall also include comments upon Annexure-P/1 which is a death certificate in respect of Husna. Incase, the report is not submitted, the Principal Secretary, Home Department shall remain present before this Court on 10.02.2020. Learned Additional Advocate General who is present in Court shall inform this order to the Principal Secretary, Home Department. Noncompliance of this order shall be viewed seriously, as the case involves personal liberty of an individual who is alleging that he is in jail without there being any crime committed on his part.

List the matter on **10.02.2020.**”

06. An inquiry has been conducted in the matter and based upon the finger prints, a report has come duly signed by the Principal Secretary Home Department and now the Principal Secretary has stated that the person who is in jail

is not Husna, meaning thereby, an innocent person is languishing in jail for the last four months. He was sent to jail on 18-10-2019 and till date he is in jail. It is really unfortunate that while filing a return in the present case, an attempt was made by the State of Madhya Pradesh that the person who is in jail is a convict in respect of Session Trial No. 41/1976. It was only the insistence of the petitioner which forced us to direct a thorough inquiry and to obtain a report from the Principal Secretary Home Department based upon finger prints obtained for the first time when Husna was lodged in jail and the finger print of the person, who is in jail at present i.e. Husan. Undisputed fact is that Husna is no more. His death has taken place on 10-09-2016. The report submitted by the Principal Secretary establishes that the person, who is in jail is not Husna, and therefore, as his detention every second is an illegal detention the respondents State is directed to release Husan, forthwith.

07. In the present case, the Sub Divisional Magistrate (Police) has made an incorrect statement on affidavit. A separate case for contempt be registered against the Sub Divisional Magistrate (Police) for making a false statement on affidavit in respect of detention of the father of the petitioner. The contempt be registered separately. Not only this, a contempt case be also registered against all those persons who have made various entries in the *Rojnamcha* dated 18-10-2019 stating that the father of the petitioner is Husna and he has been arrested.

08. Learned Additional Advocate General has placed reliance upon a judgment delivered in the case of *Saurabh*

Kumar v/s Jailor Koneila Jail and Another reported in (2014) 13 SCC 436. Heavy reliance has been placed upon paragraphs No. 21 and 22 and the same reads as under :-

“21. Two things are evident from the record. Firstly, the accused is involved in a criminal case for which he has been arrested and produced before the Magistrate and remanded to judicial custody, Secondly, the petitioner does not appear to have made any application for grant of bail, even when the remaining accused persons alleged to be absconding and remain to be served. The net result is that the petitioner continues to languish in jail.

22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of Habeas Corpus is, in the circumstances, totally mis-placed. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the Court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody. “

09. Learned Additional Advocate General has stated that the present petition can never be termed as a *habeas corpus* writ petition.

10. This Court has carefully gone through the aforesaid case and is of the considered opinion that there cannot be a better example than the present case of *Habeas Corpus* Writ petition.

11. In the entire scheme of Judicial review of administrative action in India, the pivotal position is occupied by Article 226 of the Constitution of India. Article 226 provides an important mechanism for judicial review of administrative action.

12. Article 226 (1) empowers every High Court notwithstanding anything in Article 32, throughout the territories in relating to which the High Court exercises jurisdiction, to issue to any person or authority, including in appropriate cases any government, within those territories, directions, orders or writs including writs in the nature of *habeas corpus*, *mandamus*, *quo warranto*, prohibition and *certiorari* for the enforcement of Fundamental rights or for any other purpose.

13. The writ of *habeas corpus* has been described as “a great constitutional privilege” or “the security of civil liberty”. It provides a remedial procedure in case of illegal detention. The principle aim of the writ is to ensure swift judicial review of alleged unlawful detention on liberty or freedom of the prisoner of detenu [*The State of Maharashtra v/s Bhaurao Punjabrao Gawande reported in (2008) 6 SCC 613*].

14. The writ of *habeas corpus* is issued for release of a person, who has been detained unlawfully, or without any legal justification. The writ of *habeas corpus* is used primarily to secure the release of a person who has been detained unlawfully, or without any legal justification. The great value of the writ of *habeas corpus* lies in that it enables immediate determination of the right of a person as

to his freedom [*Ranjit v/s The State of Punjab reported in 1959 Supp (2) SCR 727*].

15. The Constitution of India under Article 21 provides that no person can be deprived of his life and personal liberty except according to the procedure established by law.

16. The Hon'ble Supreme Court has held that expression procedure established by law in Article 21 means fair and reasonable procedure [*Maneka Gandhi v/s Union of India reported in (1978) 1 SCC 248*].

17. In the present case, a person, who has not been convicted in any criminal case nor is in under trial, has been sent to jail by the police. He was caught from his village and produced before the Magistrate stating that he is Husna and the learned Judge, based upon the report filed by the police, in the mechanical manner, sent him to jail.

18. The most unfortunate part is that the State Government while filing a reply initially has defended its illegal action of sending an innocent man, who is aged about 68 years, to jail. No amount of compensation can return the period during which, the father of the petitioner was in jail. The constitutional rights of Husan have been violated with impunity.

19. In the case of *Bhim Singh v/s Jammu & Kashmir reported in (1985) 4 SCC 677*, the Hon'ble Supreme Court in the case of illegal detention of Bhim Singh has awarded a sum of Rs.50,000/- as cost. The Hon'ble Supreme Court in the case of Bhim Singh referring to *Rudal Shah v/s The State of Bihar reported in AIR 1983 SC 1086* and

Sebastian M. Hongray v/s Union of India reported in AIR 1984 SC 1026 has observed that it is now established that “we have a right to award monetary compensation by way of exemplary cost or otherwise”. It has also been observed that “When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished by his being set free. In appropriate cases, the jurisdiction to compensate the victim by awarding suitable monetary compensation”.

20. The Hon'ble Supreme Court in *catena* of judgments has held that compensation can be awarded to the victim by the Court. In the present case it was only after the Principal Secretary, Home was directed to conduct an enquiry, the true picture has been brought before this Court and it has been stated on the affidavit that the person, who is in jail, is not Husna, he is Husan and the person, who was convicted, is no more and in his place some other person has been lodged in jail.

21. The poor tribal was pleading before the police, he was begging for mercy before the police stating that he is not Husna, who is a murder convict, however, his voice was crushed by the police force and forcibly, a mechanical exercise took place by lodging him in jail as a murder convict. The arguments canvassed by the learned Additional Advocate General that the writ of *habeas corpus* is not maintainable, are misplaced.

22. Resultantly, as a person, who is a poor tribal aged

about 68 years, detained illegally by the State Government and all attempts were made to justify his illegal custody as legal custody, no amount of monetary compensation is going to compensate the poor tribal. However, the interest of justice would be sub-served by awarding reasonable compensation and the same shall be paid by the State of Madhya Pradesh, within a period of thirty days, from today. This Court really appreciates the personal efforts done by the Principal Secretary, Home in getting the identification done. Very less time was granted to the Principal Secretary, Home for this purpose. However, he got the identification done by making personal efforts in such a short span of time

23. Accordingly, the present Writ Petition is allowed. State Government shall pay a compensation of Rs.5,00,000/- (Rupees Five Lakh Only) to the father of the petitioner. The same shall be deposited in his Bank account and if he doesn't have a Bank Account the Collector, Dhar shall personally assist the father of the petitioner, Husan in getting the Bank Account opened and the amount shall be deposited within a period of thirty days in the Bank account of Husan, who is illegally detained by the State.

24. The present case is an example of arresting innocent people without identifying them properly, and therefore, it is directed that in all cases, where an arrest is made, the authorities shall identify the persons so arrested on the basis of Bio-metric as well as other documents in order to ensure their identity, in order to ensure that no innocent person like the father of the present petitioner, Husan go to jail again.

The State Government shall issue necessary instruction to all the authorities and to all police authorities for assuring compliance of the order passed by this Court.

25. This Court hopes and trust that on the basis of mistaken identity of an individual, classic comedy of error shall not be repeated as written by great author, the William Shakespeare.

With the aforesaid, the writ petition stands allowed.

Certified copy, as per rules.

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

(SHAIENDRA SHUKLA)
J U D G E

Ravi