

Court No. - 7

Case :- HABEAS CORPUS WRIT PETITION No. - 509 of 2020

Petitioner :- Om Prakash And 6 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Sayyed Kashif Abbas Rizvi, Joun Abbas

Counsel for Respondent :- G.A.

Hon'ble Pritinker Diwaker, J.

Hon'ble Prakash Padia, J.

Mr Mehmood Pracha & Sri Sayyed Kashif Abbas, learned counsel for the petitioners (through video conferencing) and Mr Manish Goyal, learned Additional Advocate General, assisted by Mr J K Upadhyay, learned AGA for the State.

This petition has been filed by the petitioners, seeking issuance of a writ of habeas corpus, claiming themselves to be the father, mother, elder brother, minor brother, bhabhi, dadi of the deceased victim-girl and one Surender Kumar, resident of District Sonipat, Haryana, allegedly claiming himself to be the Pairokar on behalf of other petitioners and further projecting himself to be the National General Secretary of Akhil Bharatiya Valmiki Mahapanchayat.

According to the petition, after the death of victim girl, the entire family, including petitioners 1 to 6 have been detained since 14.9.2020 at their Village Boolgarhi, Post Meetai, Police Station Chandpa, District Hathras. It has also been stated in the petition that their Cell Phones have been taken away by the Administration; the Administration had installed blockades in and around Hathras district; the persons, who seek to travel to the area, are being prohibited to do so without any lawful reason and being prevented from doing so by use of illegal force and measures and from 29.9.2020 to 30.9.2020, petitioners 1 to 6 were completely blocked by the

Administration from being travelled to meet with any person. It has also been pleaded that the dead body of the deceased victim-girl was never given into the custody of petitioners 1 to 6. Further case of the petitioners are that petitioners 1 to 6 wish to travel to Delhi as Akhil Bharatiya Valmiki Mahapanchayat is helping them in putting their case before the Courts.

Instead filing Vakalatnama of the petitioners, it has been stated in the petition that petitioner no.7-Surender Kumar has been approached by the remaining petitioners over telephone / electronic means and a Whats App message has been sent by the family members of the deceased victim-girl, appointing Mr. Mehmood Pracha, as their Counsel. Screen shot of the Whats App message has been filed along with the writ petition.

During arguments, it has been prayed by learned counsel representing the petitioners that as petitioners 1 to 6 have been illegally detained, they be set free forthwith and be permitted to travel to Delhi, as per their free will.

Learned State Counsel raised the following preliminary objections:

(i) that once the matter is already sub-judice before the Hon'ble Apex Court, this petition is not maintainable before this Court and whatever prayer has been made before this Court, is required to be made before the Hon'ble Apex Court;

(ii) present writ petition has been filed even without obtaining Vakalatnama of petitioners 1 to 6. Moreover, no Vakalatnama was ever executed by petitioner no.7 in favour of Mr Mehmood Pracha or any of the two Advocates.

(iii) that when petitioners 1 to 6 have been informed about filing of the present petition, they have categorically stated that they have not authorized any one to file such petition;

(iv) that so called screen shot of the Whats App message is

nothing, but a forwarded message of which details are not there and it merely states that "in the case of deceased victim-girl, through Akhil Bharatiya Valmiki Mahapanchayat, Mr Mehmood Pracha is being appointed as Counsel."

The aforesaid message is a vague message and does not make it clear as to who wants to appoint whom and further in which case such alleged appointment is being made;

(v) that the entire matter is already sub-judice before the Hon'ble Apex Court (W.P. CRL. 296 of 2020: *Styama Dubey & Ors. vs. Union of India & Ors.*) and the Hon'ble Apex Court has directed the State of Uttar Pradesh to provide adequate protection and security to the witnesses/victim's family members. State Counsel has produced a copy of one such communication dated 07.10.2020 sent by Garima Prasad, Standing Counsel- State of Uttar Pradesh, Supreme Court of India to the Government of Uttar Pradesh;

(vi) that pursuant to the direction given by the Hon'ble Apex Court, adequate protection and security has been provided to family members of the deceased victim-girl, including petitioners 1 to 6 and even personal Guards have been deployed on duty to ensure their safety;

(vii) that CCTV Cameras have been installed near the house of the deceased victim-girl so that unwarranted and unsocial elements may not enter in the premises;

(viii) that present writ petition has been filed at the behest of one Surender Kumar, whose details are subjected to verification. The said Surender Kumar has though claimed himself to be the National General Secretary of Akhil Bharatiya Valmiki Mahapanchayat, but no such relevant document is on record. Even otherwise, a petition seeking writ of habeas corpus is not maintainable at the behest of such person;

(ix) that petitioners 1 to 6 are free to move; they have never made any request before the Administration for going anywhere; their security is paramount consideration for the State and no restriction whatsoever has been put upon petitioners 1 to 6;

(x) that the moment the petitioners are permitted to go to Delhi escort free, the very purpose of giving them security pursuant to the orders of the Hon'ble Supreme Court as well as the Lucknow Bench of this Court would be frustrated.

(xi) that one more habeas corpus writ petition has been filed by petitioners, namely, Om Prakash, Satender Kumar and Rama Devi, for issuance of a writ of habeas corpus. The successive writ petitions by the petitioners reflect that they are being used by political persons or so called social organizations and the same is nothing, but an abuse of process of the Court. The successive petitions also make it clear that the poor and illiterate petitioners are even not aware as to how they are being used by the political persons or so called social organizations. He placed reliance upon the judgment of the Apex Court in *Kishore Samrite v. State of Uttar Pradesh & Ors.* (2013) 2 SCC 398.

The following documents produced before this Court by learned State Counsel are taken on record:

(i) Photocopy of hand written statement of the petitioners, stating therein that they have never authorized any one to file such a petition on their behalf; and

(ii) Photocopy of letter dated 07.10.2020 sent by learned Standing Counsel for the State of Uttar Pradesh, Supreme Court of India, addressed to the State Counsel.

We have specifically asked learned counsel for the petitioners as to whether he wishes to go to the Hon'ble Apex Court for

filing any such petition/application, he replied that the Hon'ble Apex Court would take up the matter in the next week and that would be too late for him, therefore, this petition be decided.

Undisputedly, the Hon'ble Apex Court is in *seisin* of the entire case and the matter is being taken as a Public Interest Litigation by the Hon'ble Apex Court. State of Uttar Pradesh has already been directed to file affidavit clarifying its stands.

In the aforesaid facts and circumstances of the case, judicial propriety demands that it will not be proper for this Court to entertain the present petition on merits, especially when security has been provided to petitioners 1 to 6 and other family members of the deceased victim-girl on the observation made by the Hon'ble Apex Court and also on the basis of the directions issued by the Lucknow Bench of this Court on 01.10.2020 in a Suo Motu Petition. If the petitioners have any grievance, they are at liberty to file appropriate petition / application before the Hon'ble Apex Court.

Without entering into the merits of the case, with the above observations, petition is dismissed.

The party shall file a computer generated copy of this order downloaded from the official website of High Court Allahabad, self-attested by the petitioners/their representative, along with a self-attested identify proof of the said person (s) (preferably Aadhar Card).

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 8.10.2020

RKK/-

(Prakash Padia, J)

(Pritinker Diwaker, J)