

Reserved

Habeas Corpus Writ Petition No.30113 of 2015

Smt. Kanchan Verma Petitioner

Vs.

State of U.P. & others Respondent

Hon'ble Tarun Agarwala, J.

Hon'ble Amar Singh Chauhan, J.

Per:Tarun Agarwala, J.

(Delivered on 26th May, 2015)

This petition has been filed by Smt. Kanchan Verma through her next friend Nasir Ali alleging that she has wrongly been detained in Nari Niketan at Moradabad under the orders of the Sub-Divisional Magistrate, Dhanaura, Amroha-respondent no.3. She has accordingly, filed the present writ petition in the nature of habeas corpus.

By our order dated 21st May, 2015, we had directed the Superintendent of Police, Amroha to produce the petitioner before the Court on 25th May, 2015. We had also directed the Sub-Divisional Magistrate, Dhanaura, Amroha-respondent no.3 to file an affidavit justifying his action indicating under what provision of law he had passed the order detaining the petitioner in Nari Niketan. The petitioner has been produced today and an affidavit

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has been filed by respondent no.3.

As per the affidavit of the Sub-Divisional Magistrate, Dhanaura, Amroha, it is contended that the Sub-Inspector Neeraj Kumar, Police Station Gajraula, Amroha had submitted two reports on 27th April, 2015 under Section 151 Cr.P.C. alleging that he along with Constable Ramanand Sagar was going to make an inquiry in respect of Beat No.22 at around 1100 hours when they found in front of Ramabai Degree College that there was a gathering of several persons in which the parents of the petitioner Kanchan Verma were resisting the petitioner from allowing her to go with Nasir Ali. A crowd had gathered and since there was an apprehension of breach of peace, the petitioner along with Nasir Ali were produced before the Sub-Divisional Magistrate, Dhanaura, Amroha praying that Nasir Ali may be remanded to judicial custody and that the petitioner may be sent either to judicial custody or to Nari Niketan.

The Sub-Divisional Magistrate further submitted that the statement of the petitioner was recorded as well as the statements of Nasir Ali, Nasir Ali's wife, petitioner's brother, father and mother and thereafter, the impugned order was passed directing the petitioner to be sent to Nari Niketan till further orders.

The order of the Sub-Divisional Magistrate indicates that the petitioner is an adult, a divorcee and living with her parents. The petitioner is a hindu and has fallen in love with Nasir Ali, a muslim by religion. The

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order further indicates that Nasir Ali is married and has four children and that Nasir Ali's wife is opposed to this relationship. The impugned order further records that the petitioner's father, mother and brother are also against this relationship but, the petitioner, in her statement, has recorded that she wants to live with Nasir Ali. Nasir Ali has also stated that he will look after the welfare of the petitioner and would like to marry her.

The petitioner was produced before this Court and she made a statement in Court that she has been sent to Nari Niketan against her wishes since 27th April, 2015 and her freedom has been curtailed on account of this illegal detention. She further stated before us that she was teaching in Northern India Public School, Gajraula and has not been allowed to go to the school to give her lectures. The petitioner further stated that she is an adult and she wants to live with Nasir Ali, inspite of the fact that he is a married man. We find from the record that the petitioner is M.A., B.Ed and knows Nasir Ali for the last 12 years.

We have heard Sri Dharendra Srivastava, the learned counsel for the petitioner and learned A.G.A. for the State. We also had the pleasure of hearing Sri Daya Shankar Mishra, Advocate, who was kind enough to give certain inputs on the issue in hand.

The question for determination, which arises for consideration is whether the detention of the petitioner in Nari Niketan is in accordance with law. The right to life and personal liberty is the most precious right of a

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human being, which is governed by the rule of law. The Constitution is the rule of law. No one can rise above the rule of law in the Constitution. The only rule of law, which can be recognized by Courts of our country is what is deductible from our Constitution itself. Article 21 of the Constitution enacts one aspect of the principle of rule of law, namely, that the executive cannot deprive a person of his life or personal liberty without authority of law. Article 21 of the Constitution provides a requirement that the law, which authorises such deprivation must prescribe a procedure. One of the essential attributions of the rule of law is that executive action to the prejudice or detrimental to the right of an individual must have the sanction of some law as held in ***ADM, Jabalpur Vs. Shiv Kam Shukla, 1976 (2) SCC 521***. The Supreme Court further to held that even in the absence of Article 21 of the Constitution, the State has got no power to deprive a person of his life or liberty without the authority of law.

The report in the instant case has been given by the Sub-Inspector under Section 151 Cr.P.C. For facility, the said provision is extracted hereunder:-

“Section 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.

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(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 authorised under any other provisions of this Code or of any other law for the time being in force.”

A perusal of the aforesaid provision indicates that a power has been given to the Police Officer to arrest a person in order to prevent a commission of a cognizable offence. In the instant case, we find that the ingredients of Section 151 Cr.P.C. are totally lacking. The report does not indicate any cognizable offence that may occur. The report only indicates that there was an apprehension of a law and order situation, on account of the two parties belonging to two different communities. If there was a law and order situation or there were some kind of urgent case of nuisance or apprehended danger, the power under Section 144 Cr.P.C. could have been exercised.

In the light of the aforesaid, we find that even after recording the statement of the petitioner that she is an adult, a divorcee and wants to live with a person of her choice, there was no occasion for the Magistrate to detain her in a Nari Niketan. This order, in our opinion, is patently without any authority of law. We are of the opinion that personal liberty in such a high handed manner cannot be curtailed merely on an apprehension especially when such an apprehension was not in existence. The petitioner has stated before us that for

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almost a month she has not been allowed to leave the Nari Niketan or to go to work. She has further stated that Nari Niketan is not a hospitable place where one could live happily. The petitioner has further stated that she was living in the company of juveniles, children and mentally retarded women in inhospitable conditions.

We are of the opinion that the liberty to move, mix, mingle, talk, share through company cannot be substantially curtailed and the action taken was totally violative of Article 21 of the Constitution. The expression "procedure prescribed by law" in Article 21 of the Constitution has been interpreted. In ***Menka Gandhi Vs. Union of India, AIR 1978 SC 597*** the Supreme Court held that the law must be right, just and fair, and not arbitrary, fanciful or oppressive otherwise there would be no procedure at all and the requirement of Article 21 of the Constitution would not be satisfied.

In ***Mrs. Kalyani Chaudhari Vs. State of U.P. and others, 1978 Cri.L.J. 1003*** the petitioner in that case was detained in Mahila Asram against her wishes. A Division Bench of this Court found that the petitioner was an adult and was illegally being detained. The Court did not find that the objection raised by her father was sufficient, and accordingly, set the petitioner at liberty forthwith. The said decision is squarely applicable to the instant case.

In the light of the aforesaid, we are of the opinion that the action of the Sub-Divisional Magistrate was not only arbitrary but there was total deprivation of the

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personal liberty of the petitioner, which was issued without any authority of law. The writ of habeas corpus is a process for securing the liberty of the subject by affording an effective means of immediate relief for unlawful and unjustifiable detention. We find there is no legal justification for the detention of the petitioner and, accordingly, we issue a writ of habeas corpus directing the Superintendent of Police, Amroha, Sub-Divisional Magistrate, Dhanaura, Amroha, Superintendent, Nari Niketan, Moradabad and Station House Officer, Police Station Gajraula, District Amroha, respondent nos.2, 3, 4 and 5 to release the petitioner forthwith. The Superintendent of Police, Amroha will ensure that the petitioner is escorted and taken to her parents residence from where the petitioner would be at liberty to live either with her parents or live according to her own choice and freewill.

The writ petition is allowed.

A certified copy of the order shall be sent by the Registrar General to the Superintendent of Police, Amroha immediately for necessary information and action. The A.G.A. will also send a certified copy of the orders to the respondent nos.2, 3, 4 and 5 during the course of the day. Registry will ensure that certified copy of the orders are made available to the parties today itself on payment of usual charges.

Date: 26.5.2015

Bhaskar

(Amar Singh Chauhan, J.) (Tarun Agarwala, J.)