

L\202
ITEM NO.3

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CRIMINAL) NO. 310 OF 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for impleadment and directions and further
direction and office report)

WITH

W.P(CRL.) NO. 210 of 2011
(With office report)
(FOR FINAL DISPOSAL)

W.P(CRL.) NO. 233 of 2011
(With office report)

W.P(CRL.) NO. 236 of 2011
(With office report)

W.P(CRL.) NO. 82 of 2010

Date: 16/07/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Counsel for the parties

Prof. Bhim Singh, petitioner-in-person
Mr. B.S. Billoriwa, Adv.
Mr. V.P. Singh, Adv.
Mr. P.V. Yogeswaran, Adv.

WP 82, 210

Mr. Satish Vig, Adv.

WP 233, 236

Mr. Dinesh Kumar Garg, Adv.

Union of India

Mr. P.P. Malhotra, A.S.G.
Ms. Satya Siddiqui, Adv.
Mr. Sarfroz A. Siddiqui, Adv.
Mr. S.K. Mishra, Adv.
Mr. D.S. Mahra, Adv.
Ms. Binu Tamta, Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. Chetan Chawla, Adv.
Mr. B.K. Prashad, Adv.

Ministry of Home

Mr. Harish Chandra, Sr. Adv.
Mr. Siddharth Dave, Adv.
Ms. Sunita Rani Singh, Adv.
Mr. B.K Prashad, Adv.

Ms. Kamini Jaiswal, Adv.
Mr. Arun K. Sinha , Adv.
Mr. Anil K. Jha , Adv.

State of NCT of Delhi Mr. P.P. Malhotra, A.S.G.
Mr. Mukesh Verma, Adv.
Mr. Vikas Bansal, Adv.
Mr. D.S. Mahra, Adv.
Mrs. Anil Katiyar, Adv.

State of U.P. Mr. Ardhendumauli Kumar Prasad, Adv.

Mr. Ameet Singh, Adv.
Mr. Aviral Saxena, Adv.
Ms. Pragati Neekhara, Adv

Mr. Praveen Swarup , Adv.
Mr. Javed Mahmud Rao, Adv.

State of Jharkhand Mr. Ratan Kumar Choudhuri , Adv.
Mr. Arun Kumar Beriwal , Adv.

Mr. Colin Gonsalves, Sr. Adv.
Mr. Tariq Adeeb, Adv.
Ms. Jyoti Mendiratta , Adv.

State of Rajasthan Mr. Milind Kumar , Adv.

Mr. Vipin Kumar Jai , Adv.
Mr. Pradeep Misra, Adv.

State of J & K Mr. Sunil Fernandes, Adv.
Ms. Astha Sharma, Adv.
Ms. Insha Mir, Adv.
Mr. Raghav Chadha, Adv.

State of Haryana Mr. Manjit Singh, Adv.
Mr. Tarjit Singh, Adv.
Mr. Anil, Adv. for
Mr. Kamal Mohan Gupta, Adv.

West Bengal Ms. Debjani Das P., Adv.
Mr. Avijit Bhattacharjee, Adv.
Ms. Sarbani Kar, Adv.

Mr. Satish Vig, Adv.

State of Punjab Mr. V. Madhukar, A.A.G.
Mr. Paritosh Anil, Adv.
Ms. Anvita Cowshish, Adv.
Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

In response to the order passed by this Court on May 8, 2013 seeking explanation from the respondent No. 1 - Union of India and respondent No. 3 - State of Jammu & Kashmir - to explain as to why adequate steps were not taken in advance to avoid the physical assault which is said to have taken place on May 3, 2013 on the prisoner Sanaullah Ranjay s/o Ishaq Hussain, who was lodged in Kot Bhalwal Jail, Jammu (he has died later on), three affidavits have come, one has been handed over by Mr. P.P. Malhotra, learned Additional Solicitor General, and the other two have been filed by the State of Jammu & Kashmir.

In its affidavit, the Union of India has set out the preventive steps which were already in place in Jammu & Kashmir, action taken by the Jammu & Kashmir Government against the jail officials and the steps taken to ensure that such incidents do not recur. It is not necessary to refer to the system which was already in place prior to May 3, 2013 because despite that system in place, a fatal incident on foreign prisoner had taken place. Suffice it to say that after the incident on May 3, 2013 had taken place and the order was passed by this Court on May 8, 2013, the Government of Jammu & Kashmir (Office of the Director General of Prisons) has issued a circular on May 14, 2013. By this circular all the Superintendents of Jails in the State have been directed to ensure that the segregation for foreign nationals from the category of prisoners should be strictly adopted and separate blocks where no prohibited articles are lying and round the clock vigil be exercised upon their activities. For undertaking daily routine works foreign nationals are to be kept away from the other category of prisoners. The In-charge officers of the blocks where foreign nationals are lodged have been made personally responsible for the safe custody of those prisoners and maintaining discipline amongst them. Searching mechanism in the respective barracks, compartments, drains, lawns and other areas have been ordered to be strengthened by CCTV surveillance system to monitor the activities of the prisoners. Certain other directions have also been issued.

In light of the above circular, we hope that the prison authorities in the State of Jammu & Kashmir shall exercise strict vigil over the prisoners to ensure that the foreign national prisoners kept in jails in the State of Jammu & Kashmir remain safe and no harm is caused to them in any manner.

Though the additional affidavit and affidavit filed by the State of Jammu & Kashmir in compliance of the order dated May 8, 2013 and the documents annexed thereto run into 285 pages, but no details in respect of the investigation conducted pursuant to the First Information Report dated May 4, 2013 of the incident that occurred on May 3, 2013 on the prisoner Sanaullah Ranjay have been given. The progress made with regard to the inquiry against the concerned jail authorities has also not been adequately explained. We direct the respondent No. 3 to file appropriate affidavit, including the progress made in respect of the above two aspects. Such affidavit shall be filed by the respondent No. 3 within four weeks.

In the Criminal Miscellaneous Petition No. 10821 of 2013 made by the petitioner, it is stated that there are 12 Pakistani prisoners who have completed more than 15 years in prison and they deserve to be repatriated. These 12 Pakistani prisoners are : (1) Ghulam Nabi s/o Fazal Din, (2) Ashiq Ali s/o Warand Ali, (3) Javed Hussain Shah s/o Gulam Hussain Shah, (4) Abdul Hayee Malik s/o Mohd. Ajmal Malik, (5) Adbul Rashid Gani s/o Abdul Kadar Shaikh, (6) Abdul Rahim s/o Majid Khan, (7) Mohd. Hussain s/o Nazir Ahmed, (8) Mohd. Mubashir s/o Mohd. Tahir, (9) Shahnawaz Malik s/o Kandar Malik, (10) Dilawar Sain s/o Hasan Sain, (11) Abdul Mateen s/o Hazi Mohd. Yakub and (12) Mohamad Sharif.

In their affidavits, of which reference has been made

above, the Union of India as well as State of Jammu & Kashmir have explained the position with regard to above 12 prisoners.

We find from the affidavits filed by the Union of India and the State of Jammu & Kashmir that acquittal of Ghulam Nabi has been challenged by the Central Bureau of Investigation (CBI) before this Court and the appeal preferred by CBI is pending. Since the matter relating to Ghulam Nabi is sub judice, no direction can be given for his repatriation as of now. Let CBI or the counsel for Ghulam Nabi apply to this Court for expeditious hearing of the case.

About Ashiq Ali, we find from the affidavit of the Union of India that his nationality confirmation is yet awaited from the Pakistan High Commission. Though Ministry of External Affairs has taken up the matter concerning Ashiq Ali with the Pakistan High Commission on four occasions this year, the last one being as recent as on July 3, 2013, yet Pakistan High Commission has not confirmed his nationality. Obviously, until his nationality is confirmed and travel documents are issued by the Pakistan High Commission, the question of his repatriation would not arise. The Ministry of External Affairs will do well in taking up the matter concerning Ashiq Ali again with the Pakistan High Commission.

As regards Javed Hussain Shah, Adbul Rashid Gani, Abdul Rahim, Mohd. Sharif, Mohd. Hussain and Abdul Mateen, it appears that they are undergoing life sentence. In view of that, we are satisfied that they cannot be repatriated.

Insofar as Mohd. Mubashir and Dilawar Sain are concerned, it transpires from the affidavit filed by the Union of India that Mohd. Mubashir shall complete his sentence on February 18, 2014, while Dilawar Sain shall complete his sentence on October 1, 2013. Until they complete their sentence, obviously they cannot be repatriated.

As regards Abdul Hayee Malik, we find that the Government of Jammu & Kashmir has not yet conveyed its no-objection for his repatriation to the Union of India. Mr. Sunil Fernandes, learned standing counsel for the State of Jammu & Kashmir, submits that the Government of Jammu & Kashmir shall be in a position to convey its position to the Union of India for his repatriation within one month from today. We accept his statement. We also record and accept the statement of Mr. P.P. Malhotra, learned Additional Solicitor General, that within two months of receipt of no-objection from the State Government for his repatriation, the Union of India shall be in a position to repatriate him within two months therefrom provided the travel documents are given by the Pakistan High Commission.

Concerning Shahnawaz Malik, it appears that he has completed his sentence on February 3, 2013. However, the Government of India has asked the State of Jammu & Kashmir to review carefully whether any case is still pending investigation against him. If no investigation or case is pending against him, the Government of India has asked the Government of Jammu & Kashmir to send fresh confirmatory no-objection for his repatriation. We direct the Government of Jammu & Kashmir to convey to the Government of India its position firmly within one month from today as to whether any investigation/case is pending against Shahnawaz Malik or not. If no case is found to be pending against him, the Government of Jammu & Kashmir shall send fresh confirmatory no-objection of his repatriation to the Government of India also within one month from today. The Government of India is directed to repatriate Shahnawaz Malik within two months of receipt of no-objection from the Government of Jammu & Kashmir for his repatriation provided that his travel documents are given by the Pakistan High Commission.

Writ Petition (Criminal) No. 82 of 2010

Since Writ Petition (Criminal) No. 210 of 2011 with regard to (1) Sakhi Mohammad, (2) Bagga Khan, (3) Barkat Hussain, and (4) Alam Sher (Alam Shahbir) has already been dismissed by us today, it

is clarified that this Writ Petition is now confined to the Pakistani prisoners other than the above four.

Mr. P.P. Malhotra, learned Additional Solicitor General, prays for time to seek instructions and file counter affidavit within four weeks from today.

Writ Petition (Criminal) No. 233 of 2011 and
Writ Petition (Criminal) No. 236 of 2011

Mr. P.P. Malhotra, learned Additional Solicitor General, prays for time to seek instructions and file counter affidavit/s within four weeks from today.

List Writ Petition (Criminal) No. 310 of 2005, Writ Petition (Criminal) No. 233 of 2011, Writ Petition (Criminal) No. 236 of 2011 and Writ Petition (Criminal) No. 82 of 2010 on October 23, 2013.

Writ Petition (Criminal) No. 210 of 2011

Writ Petition is dismissed in terms of the signed order.

|(Rajesh Dham)
|Court Master

| |(Renu Diwan)
| |Court Master

|

(signed order in Writ Petition (Criminal)
No. 210 of 2011 is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 210 OF 2011

SAKHI MOHD. & ORS.

...PETITIONERS

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

O R D E R

Heard.

2. We find from the available material and the affidavit of B.R. Sharma, Principal Secretary, Home Department, Government of Jammu & Kashmir filed on September 26, 2012 that four Pakistani nationals, namely, (1) Sakhi Mohammad, (2) Bagga Khan (3) Barkat Hussain, and (4) Alam Sher (Alam Shahbir) were never lodged in any of the jails in Jammu & Kashmir. No material has been produced by the petitioners to show otherwise.

3. We are, thus, satisfied that the reliefs claimed in the Writ Petition cannot be granted.

4. Writ Petition is, accordingly, dismissed.

.....J.
(R.M. LODHA)

NEW DELHI;
JULY 16, 2013

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)