

ITEM NO.42

COURT NO.10

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 (CRL.) NO(s). 310 OF 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(with appln.(s) for permission to intervene in the writ petition and c/delay in filing detailed affidavit in pursuance to the direction of this Hon'ble Court dated 20.04.2007 and modification of court's order and c/delay in filing counter affidavit and clarification/modification of court's order and office report)

WITH

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

Date: 02/12/2011      These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE H.L. GOKHALE

Counsel for the parties

Prof. Bhim Singh, petitioner-in-person  
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Mr. Chandra Prakash Pandey ,Adv.  
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Mr. Javed Mahmud Rao ,Adv.

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State of J & K Mr. Sunil Fernandes, Adv.  
Ms. Astha Sharma, Adv.

State of Punjab Mr. Anil Grover, AAG  
Ms. Noopur Singhal, Adv.  
Mr. Kuldip Singh, Adv.

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

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

On November 11, 2011, Prof. Bhim Singh - petitioner  
in-person submitted that four female prisoners, namely, Baby  
Hina d/o Saif-ur-Rehman, (2) Fatima Saddique d/o Choudhary  
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Mohd. Saddique, (3) Hajra Mohammad Mamta w/o Saddique, and  
(4) Mahajabeena d/o Ghulam Rasool have been languishing in  
different jails unattended and without trial for many years.

On that day, we directed the counsel for the Union of  
India to furnish the present status of these four female  
prisoners in the additional affidavit and show cause why  
they should not be repatriated to their country without any  
further delay.

In response thereto, an additional affidavit has been  
filed by the Director (Foreigners) in the Ministry of Home

Affairs, Government of India.

As regards Baby Hina d/o Saif-ur-Rehman, it is stated that she is 4-1/2 years old and she is with her mother, who is convicted under Sections 21/23 of the NDPS Act, at Central Jail, Amritsar. As per Punjab Jail Manual, any female prisoner may be allowed to retain her child with her until it is four or with the approval of the Superintendent even upto six years of age if she so desires. It is stated that insofar as Ministry of Home Affairs is concerned, it has advised the Government of Punjab to produce the child before the Child Welfare Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Amendment Act, 2006.

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Two things emerge from the additional affidavit insofar as Baby Hina is concerned. One, she is not a prisoner, and two, she is staying with her mother as she is hardly 4-1/2 years old. As a child, obviously, her welfare is of paramount importance and, therefore, the advice of the Ministry of Home Affairs to the Government of Punjab to produce her before the Child Welfare Committee appears to us to be quite appropriate. We give liberty to Prof. Bhim Singh to apply for any direction with regard to Baby Hina which is necessary for her welfare.

The two female prisoners at Nos. (2) and (3) above, are convicts under Sections 21/23 of the NDPS Act and have been sentenced to suffer 10 years rigorous imprisonment and six months and fine of Rs. 1 Lakh each. Fatima Saddique d/o Choudhary Mohd. Saddique is presently undergoing sentence and is lodged in Central Jail, Amritsar. If she pays fine, her sentence will be completed on November 10, 2016. Similarly, Hajra Mohammad Mamta w/o Saddique is also lodged

in the Central Jail, Amritsar. She is undergoing sentence and she would complete her sentence on November 10, 2016 if she pays fine.

With regard to these two female prisoners, in the circumstances noticed above, question of repatriation before completion of their sentence does not arise.

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Insofar as Mahajabeena d/o Ghulam Rasool is concerned, it is stated that she is an accused in FIR No. 48/2009 under Section 2/3 Egress and Internal Movement (Control) Ordinance, 2005 and the offence under the Passport Act and Unlawful Activities Act. She was granted bail by Sessions Judge, Kulgam and she is not lodged in any jail. Since she is facing trial in FIR No. 48/2009, we are satisfied that she also cannot be repatriated to her country at this stage.

As regards other directions let the matters come up for consideration on January 24, 2012.

(Rajesh Dham)  
Court Master

(Renu Diwan)  
Court Master