

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 & ORS.

Respondent(s)

(With appln(s) for permission to intervene in the writ petition, c/delay in filing detailed affidavit in pursuance to the direction of this Hon'ble Court dated 20.4.2007, modification of Court's order, modification/clarification, c/delay in filing counter affidavit, clarification/modification of Court's order and office report)

Date: 12/07/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)

Prof. Bhim Singh
Mr. B.S. Billoria, Adv.
Mr. Vijay Pratap Singh, Adv.
Mr. P.V. Yogeswaran, Adv.

For Respondent(s)

Mr. S.W.A. Quadri, Adv.
Mr. Mukesh Verma, Adv.
Mr. Harsh Vardhan Surana, Adv.
Mrs. Anil Katiyar, Adv.
Ms. Saina Bakshi, Adv.
Mr. Minnatullah, Adv. for Delhi Govt.

Mr. Mukesh Verma, Adv.
Mr. Chandra Prakash Pandey, Adv. for State of UP

Mr. Sunil Fernandes, Adv.
Mr. Rajat Jariwal, Adv.
Ms. Renu Gupta, Adv. for State of J&K

Mr. Brijender Chahar, Sr. Adv.
Ms. Binu Tamta, Adv.
Mr. S.N. Terdal, Adv. for UOI

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Ms. A. Subhashini, Adv. for State of Goa

Ms. Jayashree Anand, Adv.
Mr. K.K. Mahalik, Adv.
Mr. Kuldip Singh, Adv.

Ms. Kamini Jaiswal, Adv.
Mr. Divyesh Pratap Singh, Adv.
Mr. Abhimanue Shreshtha, Adv.

Mr. Arun K. Sinha ,Adv

Mr. Anil K. Jha ,Adv

Mr. Anis Suhrawardy ,Adv

Mr. Praveen Swarup ,Adv
Mr. Javed Mahmud Rao ,Adv
Mr. Ratan Kumar Choudhuri ,Adv
Mr. Arun Kumar Beriwal ,Adv
Mr. Vipin Kumar Jai ,Adv

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

Mr. Brijender Chahar, Sr. Advocate representing the Union of India, files a Status Report in which details are given in regard to twenty two (22) Pakistani prisoners who have completed their respective sentences in this country's jails. In the Status Report it is stated that fifteen (15) out of the twenty two (22) prisoners, were already repatriated. Their names are as under:

1. Mohd. Ajmal
2. Meharban Sathi
3. Mohd. Nawaz
4. Sajat Ali Jat (TD in the name of Mohd. Khairati)
5. Shabir Ahmed

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6. Shahid Mehmood
7. Qudrat Ullah
8. Mohd. Farooq Raja
9. Dawood Ahmed Mughal
10. Faiz Ali
11. Mohd Usman Shiksh
12. Zarar Baloch
13. Shahid Latief
14. Suhail Ahmed Kataria
15. Sher Khan

Of the remaining seven (7), Shahzad Gul @ Rana Gh. Sarwar could not be repatriated because his travel documents were misplaced. A request is made to the Pakistan High Commission for issuing duplicates of his travel documents to facilitate his repatriation.

In regard to the remaining six (6) prisoners, it is stated that steps are being taken for Consular Access to them and as soon as the formalities are completed, they too would be repatriated to Pakistan.

We are quite dissatisfied with the cavalier manner in which this matter is lingering on before this court for the past about five years. Certain Status Reports, like the present one, are presented to the Court from time to time telling the court that some Pakistani prisoners, after serving out the period of sentence, were deported to Pakistan and the deportation of some others was in process. Under the pressure of the Court's orders the concerned authorities seem to be acting in this matter in a rather off hand and ad hoc manner. Unfortunately, in the approach of the Union of India and the State Government we fail to see the concern and urgency that is called for by the prisoners' right to personal liberty. Undoubtedly the

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prisoners belong to a foreign country and they have

committed offences in this country of a serious nature. But they have been duly punished by the Indian Court following the procedure established by law. After they have served out the sentences awarded to them they need to be deported with the utmost dispatch. The protection of Article 21, arguably the most precious right guaranteed under the Constitution is available to them as much as to any other person. And it is one of the foremost duties of this court to uphold that right of every person.

We propose to deal with this aspect of the matter later on.

Ms. Kamini Jaiswal, counsel representing the eight (8) applicants in Crl. M. P. No. 10428/2010, namely, 1) Syed Yassoof Shah, 2) Mohd. Shafi Dar, 3) Abdul Hassan Bhat, 4) Riyaz Ahmed Sheikh, 5) Ms. Sheeraza, 6) Gulzar Ahmed Bhat, 7) Javeed Ahmed Bhat and 8) Shabir Ahmed Khan, stated that they were accused in FIR No. 110/2002, P.S. Rajbagh, Srinagar. All of them were granted bail by orders order dated 29.1.2003 passed by the Special Judge, Kashmir on January 29, 2003 copies of which are made annexures to this application.

It appears that in that FIR, a Pakistani national Hamid Nomain Bhat, son of. Mohd. Iqbal Bhat, was also one of the accused. He was lodged in the District Jail, Sangrur, State of Punjab. He was in jail for a long time without the trial making any progress. There were a number of other cases in which the accused were Pakistani nationals who were languishing in jails for long times but the trials in the respective cases were not moving ahead. In order to facilitate an early trial in all those cases, this court by order dated November 10, 2008 transferred the

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trials to the places where the Pakistani nationals were held in prison. In regard to the trial arising from FIR No. 110/2002, P.S. Rajbagh, Srinagar this court directed that it should be held before the Sessions Judge, Sangrur within the State of Punjab where the accused Hamid Nomain was held in jail. This was to obviate any delay in transferring him from Sangrur to Srinagar jail. Apparently, however, the court was not informed that apart from Hamid Nomain Bhat there were other accused in the case who were Indian citizens and were residents of Jammu & Kashmir, like the present applicants.

A grievance is made that the transfer of the case from Srinagar to Sangrur would cause unbearable hardships to the applicants and it would become practically impossible for them to face their trial. A further grievance is made that in the meanwhile the Sangrur court has issued non-bailable warrants against them.

This aspect of the matter also needs to be dealt with properly because the order dated November 10, 2008 does not only deal with FIR No. 110/2002, P.S. Rajbagh, Srinagar, but many other similar cases. For the time being, we stay the execution of the non-bailable warrants that might have been issued by the Sessions Judge, Sangrur against the appellants in Crl.M.P. No. 10428/2010 in connection with the trial arising from FIR No. 110/2002, P.S. Rajbagh, Srinagar.

Put up this case after two weeks.

On the next date, counsel appearing for the State of Jammu & Kashmir shall bring on record all the FIRs relating to the cases mentioned in the order dated November 10, 2008.

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On that date, the Court also expects the Solicitor General to assist the Court in this matter.

(N.S.K. Kamesh)
Court Master

(R.K. Sharma)
Court Master