

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH

C.W.P. No _____ of 2008

Hemant Goswami

...Petitioner

Versus

State of Haryana and others

... Respondent

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Note: - No notice of caveat petition has been received by the petitioner.

Note:-1. The main law points involved in the writ petition are in para no. 14 at page nos. 8 of the writ petition.

2. Relevant Rules and Statues:-

i. Constitution of India

ii. Criminal Procedure Code

3. Any Other Case:-

Nil

Chandigarh (A.P.S Shergill) (Kavita Mahajan) (Raina Sabharwal)

Dated: - 07.04.2008

Advocates for the Petitioner

Enrolment No. P-810/1993

LIST OF DATES AND EVENTS

- 30th March 2008 Hawa Singh Rathi, a social worker and office bearer of the NGO Community Development Society arrested in connection with an FIR no. 31 registered on Feb 19, 2008 at Chandimandir.
- 31st March 2008 Social worker Hawa Singh Rathi produced in the court of Ms. Anshu Shukla(ACJM) at Panchkula Courts
- 31st March 2008 Bail application moved for Hawa Singh Rathi through his counsel Advocate APS Shergill in the court of Ld. Judge Ms. Anshu Shukla (ACJM) at Panchkula Courts. Notice for April 2, 2008 given to the State.
- 2nd April 2008 Order reserved for April 3, 2008 by ACJM, Ms. Anshul Sharma
- 3rd April 2008 Bail Granted to Hawa Singh Rathi. Surety furnished and identification completed. Release orders/ Release warrant issued at 3 p.m. the same day. No other case against the accused Hawa Singh is pending.
- 3rd April 2008 Orders of RELEASE WARRANT NOT EXECUTED to with malafide intention and Hawa Singh Rathi
- 7th April 2008 illegally detained. Despite after the bail being granted and after completing of all the formalities, social worker Hawa Singh Rathi still not released from jail, languishes in jail and right to life and liberty denied for 5 days, (i.e. April 3, 4, 5, 6 and 7th) without any process of law.
- 30th March 2008 Sh. Hawa Singh Rathi and his family consisting of to his wife and two minor children suffer grave damage,

7th April 2008 injury and inconvenience. Since the petitioner being a social worker does not have any regular income and earn his living on day-to-day basis, the family remains without proper food for 5 days. Wife of Hawa Singh Rathi went into depression and remains without proper medical treatment for more than 5 days.

Hence, this writ petition is being filed before this Hon'ble Court.

Chandigarh (A. P. S. Shergill) (Kavita Mahajan) (Raina Sabharwal)

Dated: - 07.04.2008

Advocates for the Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
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SYNOPSIS

The writ pertains to urgent matter of release of a social worker Hawa Singh Rathi, who was granted bail by the Panchkula Court on April 3rd, 2008 and the release orders issued the same day. Despite 5 days of issue of the release warrant, the person remains in illegal detention in the prison and thereby causing grave violation of Article 21 of the Constitution of India. Other people whose bail orders were issued on the same day, i.e. 3rd April 2008 and later have been release but the release orders of this particular person were not executed. There is an urgent need to liberate the man in unlawful custody which affects his fundamental right.

The abovementioned case is an example case of total lack of judicial accountability and abuse of the process of law. Such incidents are common everyday occurrence in most of the courts and prisons. There appears to be a total breakdown of the system and absolute apathy towards the fundamental right of life and liberty of people. This calls for an urgent need to address the situation, to reform the overall system and restore the fait of people in rule of law.

There is no other remedy in the instance case and otherwise too, other than to approach this Hon'ble Court in most urgent manner.

Chandigarh

Date: - 5.04.2008

Petitioner

Through Counsel:-

(A. P. S. Shergill) (Kavita Mahajan) (Raina Sabharwal)

Advocates for the Petitioner

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH**

C.W.P. No _____ of 2008

Hemant Goswami s/o B. M. Goswami, Chairperson, Society for Prevention of
Crime and Corruption, operating from O/o Burning Brain Society, #3, Glass
Office, Business Arcade, Hotel Shivalik View, Sector 17-E, Chandigarh 160 017

.....Petitioner

Versus

1. State of Haryana through Chief Secretary, Haryana Civil Secretariat,
Sector 3, Chandigarh
2. State of Haryana through State Home Secretary, Haryana Civil Secretariat,
Sector 3, Chandigarh
3. Haryana Police through it's Inspector General of Prisons, Police
Headquarters, Haryana Police, Panchkula
4. Registrar General, Punjab and Haryana High Court, Sector 3, Chandigarh

..... Respondents

Civil Writ Petition under Articles 226/227 of Constitution of India for
issuance of a writ in the nature of habeas corpus for directing the release
of the detenu Hawa Singh Rathi illegally confined **FOR FIVE DAYS** in
Central Jail Ambala despite the **RELEASE WARRANT** being issued on
3rd April 2008 by **THE COURT OF ADDITIONAL CHIEF
JUDICIAL MAGISTRATE ANSHU SHUKLA AT PANCHKULA IN
STATE CASE TITLED AS STATE OF HARYANA VERSUS HAWA
SINGH RATHI** despite the said **LEARNED COURT** issued a
compliance verification order to the superintendent, Ambala Prison on 5th
April 2008;

And

In addition mandamus, Certiorari or any other appropriate writ for ensuring judicial accountability and accountability of process of law

And

Writ of mandamus, Certiorari or any other appropriate writ for **directing the respondents to ensure that the rights guaranteed under Article 21, 20, 22, 14 and 15 of the constitution is not violated on no account including that of negligence, due to corruption in the support staff of the Courts, prisons and police, incompetence, etc.**

And

A writ in the nature of Certiorari be issued quashing any and all such order illegally promulgated by the State of Haryana and its departments and officials which in anyway hampers and imposes unreasonable restriction on the right of a person to be released from prison even after the grant of bail and issuance of release warrant

And

A writ in the nature of Mandamus be issued, directing the Respondents **to ensure that the lawful orders of release of any and all prisoners on bail is conveyed to the prisons authority immediately and without delay;** for which the modern technology of FAX, E-Mail and internet be used so as to prevent unnecessary inconvenience and reduce the scope of corruption in the support staff of the Courts.

And

A writ in the nature of Mandamus be issued, directing the respondents **to order fair investigation and enquiry of the circumstances leading to a situation where any person who is denied the protection of Article 21 and he/she continues to languish in prison contrary to the provisions of law.**

And

A writ in the nature of Mandamus be issued, directing the Respondents **to register a First Information Report and initiate criminal proceedings under Section 166 of the I.P.C. and other penal provisions** against all people who have disobeyed the direction of law due to which the social worker Hawa Singh Rathi (and similarly some other people too) who's granted bail by the courts was still restrained and held-up in the prison.

And

A writ in the nature of Mandamus be issued, directing the respondents **to compensate Hawa Singh Rathi for the damages and injury suffered on account of illegal detention and for violating the provisions of Article 21 of the Constitution of India.**

And

Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts circumstances of the case.

RESPECTIVELY SHOWETH:

1. That the Petitioner is a Social Activist working for development and wellbeing of the society. The petitioner is associated with many civil society organisations, including Society for Prevention of Crime and Corruption, Burning Brain Society, etc. and has earned national and international recognition for his work.
2. That the instance case also relates to one social worker named Hawa Singh Rathi s/o Bhim Singh Rathi who has been an active crusader in rural empowerment and civil rights. Hawa Singh Rathi is actively involved in social work for more than 10 years and also represents an NGO by the name of Community Development Society.

3. That the case of Sh. Hawa Singh Rathi is an example case and the present matter and the writ is in no way limited to the same. Though specific relief is sought in this peculiar case but it ideally serves an example of the state of affairs generally prevalent in this region.
4. That due to social activism and the use of Right to Information to expose corruption, Sh. Hawa Singh Rathi was falsely implicated in a false trumped up case at the behest of some influential persons and an FIR No. 31 registered on Feb 19, 2008 was registered against him at Police Station Chandimandir based in sector 23 Panchkula without joining the detenu Hawa Singh Rathi in the investigation of the FIR not even once. The frivolous charge is not even legally sustainable as the offences have not even established and the FIR has been registered without there being any investigation into the auditing and even before the expiry of the financial year. Sh Hawa Singh Rathi is following the lawful course to fight the registration of the false and concocted FIR and so the merits of the case relating to the said FIR are not being pointed and mentioned in this petition. Though the petitioner shall be obliged if the Hon'ble court also considers and evaluates the merit of the FIR on the basis of which Sh. Hawa Singh Rathi was arrested.
5. That Hawa Singh Rathi was arrested on March 30th, 2008 in connection with the said FIR and was produced in the court of Ms. Anshu Shukla (ACJM) at Panchkula Courts who ordered him to be sent to judicial custody.
6. That the bail application of Hawa Singh Rathi was moved on the same day through his counsel Advocate APS Shergill in the court of Ms. Anshu Shukla(ACJM) at Panchkula Courts. Notice for April 2, 2008 given to the State for responding to the said application. The matter was heard by the Learned Judge and the orders were reserved for April 3, 2008 by ACJM, Ms. Anshul Shukla.

7. That on April 3, 2008 the bail was granted to the petitioner and thereafter valid surety was furnished. Thereafter the release order and release warrant was issued at 3 p.m. the same day.
8. That despite the orders being issued in time, the same were not sent to the Jail. Apparently the orders of release were not sent to the Jail with malafide intention and also smell of corruption of the support staff. Despite after the bail being granted and after furnishing of surety, completing of all the formalities and even after issuance of the release warrant; social worker Hawa Singh Rathi was still not released from jail and he continues to be languishing in jail. His right to life and liberty has been denied for 5 days, (i.e. April 3, 4, 5, 6 and 7th) without any process of law.
9. That on April 5, the counsel Ms. Kavita Mahajan appeared in the court of Ld. Judge Anshu Shukla and apprised the Hon'ble court that Sh. Hawa Singh Rathi has still not been released even after 48 hours of granting of bail and issuance of the release warrant. The Ld. Judge Anshu Shukla issued an orders seeking compliance report from the Superintendent, Ambala Jail on April 5, 2008. Copy of the release order was requested by the counsel for dasti delivery but the same was denied by the Hon'ble court for the reason that there was no provision to issue duplicate orders and it's only the agent of the court who is supposed to deliver the orders to the prison authorities.
10. That Hawa Singh Rathi and his family, consisting of his wife and two minor children suffered grave damages, injury and inconvenience, and since the petitioner being a social worker does not have any regular income and earn his living on day-to-day basis, the family remained without proper food and assistance for last 5 days. The petitioner's wife went into deep depression and remains without medical treatment and medical assistance for more than 5 days.

11. That the petitioner have found that some officials have for their own personal selfish and illegal gains subverted the system, and made this a regular practice wherein only when bribes and money is paid to the clerks and support officials that the bail orders are sent to the prison. In many cases on paying sufficient money the process server accompanies the relatives/friends/well-wishers of the person in prison and delivers the bail orders by-hand. In all other cases where money is not paid, the bail orders are not sent in time. The petitioner and his advocate have been told that there are cases where the bail orders are sent through normal post and even take nearly a week before they reach the prison and the prisoner is released from the prison. Till such time all his fundamental rights, including that guaranteed under Article 21 is denied by abusing the process of law. That this deliberate and malafide delay is caused in-spite of the fact that everyday the staff of Ambala Prison comes to Panchkula Court with the under-trials and in the evening go back to the Ambala Central Jail.
12. That by summoning the record from any court and the related prison of the area, it can be clearly found that the process and system of law is being abused and while some people who are granted bail are released on the same day and others languish in jail for much longer periods. That this is against the fundamental rights guaranteed under Article 14, 15 and 21. The Hon'ble court can also constitute a special empowered committee to take cognisance and look into all such cases so as to reform the system for ever and ensure the rule of law.
13. The respondent's no. 1 to 3 have not bothered to invoke the statutory provisions and failed to discharge their lawful obligations and commitment towards public and the Constitution by not ensuring proper adherence to law and/or by issuing necessary direction, framing necessary rules and regulations, by invoking statutory provisions.

Inaction on the part of respondents is in violation of the Constitution of India and other statutory provisions of the law.

The petitioner craves indulgence of this Hon'ble Court for appropriate directions so as to protect fundamental rights of the citizens.

LAW POINTS

14. That the law points involved in this Writ petition are as follows: -
 - i. Whether it is a duty of the state to protect the life and liberty of the people and to prevent illegal detention and imprisonment of people.
 - ii. Whether it is the right of a person who has been ordered to be released on bail to be immediately enlarged on bail once the necessary conditions as set in the order are fulfilled.
 - iii. Whether it is correct and justified to detain any person in prison or custody when the release order has been issued by the court.
 - iv. Whether the respondents and officials have neglected to perform their lawful duty which deserves criminal action against the responsible officials.
 - v. Whether criminal action under section 166 of the IPC and other legal provisions needs to be taken against officials who have disobeyed the direction of law and caused injury to the petitioner and other such people.
 - vi. Whether the petitioner be compensated by the State of Haryana and its officials for illegal detention and custody which he had to undergo and because of which the petitioner and his family underwent untold injury, damages and inconvenience.
 - vii. Whether there exists a system of judicial accountability and accountability of adhering to the process of law and what remedy

lies with a poor and helpless aggrieved person to seek urgent and immediate redress (without getting into lengthy litigation or legal process) to ensure that his fundamental rights are not violated due to lack of accountability and/or abuse of process of law.

15. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.
16. That it is a fit case in which this Hon'ble Court may be pleased to intervene and compensate the petitioner and also to issue the necessary directions to the respondents to follow the law in its true spirit. The matter is also of vital general importance, affecting the entire population and requires intervention of this Hon'ble Court.
17. That there is no other alternative remedy, appeal and revision available to the petitioner except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

PRAYER

It is, therefore, respectfully prayed, that in view of the facts mentioned above this Hon'ble Court may be pleased to award following relief:-

- I. Writ in the nature of habeas corpus for directing the release of the detinue Hawa Singh Rathi illegally confined for five days in Central Jail Ambala despite the release warrant being issued on 3rd April 2008 by the court of Additional Chief Judicial Magistrate Anshu Shukla at Panchkula in state case titled as "State of Haryana versus Hawa Singh Rathi" despite the said learned court issued a compliance verification order to the superintendent, Ambala Central Jail on 5th April 2008.
- II. Writ of mandamus, Certiorari or any other appropriate writ be issued for ensuring judicial accountability and accountability of process of law

- III. Writ mandamus, Certiorari or any other appropriate writ be issued thereby directing the respondents to ensure that the rights guaranteed under Article 21, 14 and 15 of the constitution is not violated on no account including that of negligence, due to corruption in the support staff of the Courts, prisons and police, incompetence, etc.
- IV. A writ in the nature of Certiorari be issued quashing any and all such order illegally promulgated by the State of Haryana and its departments and officials which in anyway hampers and imposes unreasonable restriction on the right of a person to be released from prison even after the grant of bail.
- V. A writ in the nature of Mandamus be issued, directing the Respondents to ensure that the lawful orders of release of any and all prisoners on bail is conveyed to the prisons authority immediately and without delay; for which the modern technology of FAX, E-Mail and internet be used so as to prevent unnecessary inconvenience and reduce the scope of corruption.
- VI. A writ in the nature of Mandamus be issued, directing the Respondents to order fair investigation and enquiry of the circumstances leading to a situation where any person is denied the protection of Article 21 and he/she continues to languish in prison contrary to the provisions of law.
- VII. A writ in the nature of Mandamus be issued, directing the Respondents to register a First Information Report and initiate criminal proceedings under Section 166 of the I.P.C. and other penal provisions against all people who have disobeyed the direction of law due to which the petitioner (and similarly some other people too) who's granted bail by the courts was still restrained and held-up in the prison.

VIII. A writ in the nature of Mandamus be issued, directing the Respondents to compensate Hawa Singh Rathi for the damages and injury suffered on account of illegal detention and for violating the provisions of Article 21 of the Constitution of India and also grant exemplary cost to Hawa Singh Rathi along with the cost of this writ and all the associated costs to the petitioner.

Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts circumstances of the case.

Chandigarh

Date: - 5.04.2008

Petitioner

Through Counsel:-

(A. P. S. Shergill) (Kavita Mahajan) (Raina Sabharwal)

Advocates for the Petitioner

VERIFICATION:-

Verified that the contents of paragraphs 1 to10 and 12 to 17 are true and correct to my knowledge and contents of para no. 11 are believed to be true and correct on the basis of received information and legal advice. No part of it is false and nothing material has been concealed therein.

Chandigarh

Dated: - 5.04.2008

Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH.

C.W.P. No _____ of 2008

Hemant Goswami

.....Petitioner

Versus

State of Haryana and others

..... Respondents

Affidavit of Hemant Goswami (Aged around 37 years) s/o B. M. Goswami,
Chairperson, Society for Prevention of Crime and Corruption, operating from
O/o Burning Brain Society, #3, Glass Office, Business Arcade, Hotel Shivalik
View, Sector 17-E, Chandigarh 160 017

I, the above named deponent, do hereby solemnly affirm and declare as
under :-

1. That the deponent is filing the accompanying civil writ petition in this
Hon'ble High Court. The contents of the civil writ petition may be read as a part
and parcel of this Affidavit. The civil writ petition has been drafted under the
instructions of the deponent. The deponent declares that the contents of this
affidavit are true and correct to his knowledge and he is fully conversant with the
facts of the present case.

Chandigarh

Dated: - 07.04.2008

Deponent

VERIFICATION:-

Verified that the contents of my above stated affidavit comprising of one
para are true and correct to my knowledge. No part of it is false and nothing has
been concealed there from.

Chandigarh

Dated: - 07.04.2008

Deponent

ANNEXURE P-1

IN THE COURT OF MS.ANSHU SHUKLA, ACJM, PANCHKULA

FIR. NO 31/19.02.2008

U/S 420 &406 I.P.C.

P.S.CHANDIMANDIR

State

Versus

Hawa Singh Rathi

Application for telephonic confirmation or for issuance of fresh release order of the accused.

RESPECTFULLY SHOWETH:

1. That this Hon'ble Court was pleased to issue release warrant of the accused vide order dated 03.04.2008.
2. That the accused has not been released so far by the jail superintendent Central Jail Ambala.
3. That in the above circumstances and urgency of the matter confirmation of the receiving of the release warrant by the jail superintendent Central Jail Ambala or a fresh dasti release order through the special messenger may be ordered for immediate release of the accused.

It is therefore respectfully prayed that release order dated 03.04.2008 may kindly be confirmed telephonically or a fresh release warrant may be issued through special messenger in the interest of justice, equity and fair play.

Applicant accused

Through Counsel

(A.P.S. SHERGILL, KAVITA MAHAJAN)

Advocates.