

SAURABH KUMAR THROUGH HIS FATHER

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v.

JAILOR, KONEILA JAIL & ANR.

(Writ Petition (Crl.) No.147 of 2013)

JULY 22, 2014

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[T.S. THAKUR AND N.V. RAMANA, JJ.]

Writs - Writ of Habeas Corpus - Detention - Legality - Whether the petitioner could be said to be in illegal custody so as to warrant the issue of a writ of Habeas Corpus - Held: On facts, No - Petitioner was involved in a criminal case for which he was arrested and produced before the Judicial Magistrate and remanded to judicial custody by virtue of an order passed by the Judicial Magistrate - There was no illegal detention - However, petitioner at liberty to file application for his release in the criminal case pending before the Court of Judicial Magistrate - Constitution of India, 1950 - Art. 32.

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The petitioner, who was in Koneila Jail, Dalsingsarai, District Samastipur (Bihar), prayed for grant of a writ of habeas corpus u/Art. 32 read with Art.14, 21 & 22 of the Constitution directing the respondents to produce the petitioner before the Supreme Court and also to direct the respondent-State to devise a way to prevent malicious arrest and detention by the police that too without maintaining necessary record and further to direct the State to pay the petitioner compensation considering that the detention was a black mark to his career prospects and future. The petitioner stated that there was no complaint against him and that he was unnecessarily and illegally detained by the police.

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Per contra, the respondents contended that the petitioner was an accused in a criminal case registered

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A under Sections 147, 148, 149, 323, 427, 504, 379 and 386
 of IPC and under Section 27 of Arms Act and after such
 registration he was arrested and produced before the
 Addl. Chief Judicial Magistrate, Dalsingsarai, District
 B Samastipur, Bihar and then he was detained in judicial
 custody.

The question which therefore arose for consideration
 before this Court was whether the petitioner could be said
 to be in illegal custody so as to warrant the issue of a writ
 of Habeas Corpus.

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Dismissing the writ petition, the Court

Per Ramana, J.

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HELD:1.1. From the material on record, it is evident
 that there are series of cases pertaining to land disputes
 between the family of the alleged detenu and other
 villagers. Civil cases were filed initially. During the
 pendency of a Suit, the father and mother of the petitioner
 filed a Writ Petition No. 197 of 2012 before this Court. In
 E the said Writ Petition, this Court has passed various
 orders. A mortgage Suit No. 13/94 was also filed in which
 a decree was obtained against the grandfather of the
 petitioner and thereafter the grandfather of the petitioner
 Banwari Roy has also filed a civil Title Suit bearing T.A.

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No. 17/99 which was dismissed by the Additional District
 and Sessions Judge-I, Samastipur on 1.6.2013., taking
 into consideration the orders passed by this Court. After
 obtaining decree in the Suit for delivery of possession
 Rama Kant Singh has filed Execution proceedings on
 G which the Munsif has ordered for police force for the
 delivery of possession which was executed on 3.3.2013
 and thereafter again an incident had taken place on
 1.5.2013. A complaint was given by one Mohan Kumar
 which was registered as FIR P.S. No. 72/13 under

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different Sections of the IPC and under Section 27 of the

Arms Act. At that point of time, the petitioner was produced before the Additional Chief Judicial Magistrate. Then the Magistrate after examining him, directed to send him to jail by order dated 1.7.2013 (annexure R.6/3) [Paras 10, 11 and 12] [916-D; 917-D-E-H]

1.2. It is thus clear from the narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the Original Record which this Court has, by order dated 9th April, 2014, called for from the Court of Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. However, the petitioner is at liberty to make an application for his release in Criminal Case No. 129/13 pending before the Court of the Addl. Chief Judicial Magistrate, Dalsingsarai. [Para 13] [918-D-G]

Per Thakur, J. [Supplementing]

HELD:1. Two things are evident from the record. Firstly, the accused is involved in a criminal case for which he has been arrested and produced before the Magistrate and remanded to judicial custody, Secondly, the petitioner does not appear to have made any application for grant of bail, even when the remaining accused persons alleged to be absconding and remain to be served. The net result is that the petitioner continues to languish in jail. [Para 5] [921-D]

2. The petitioner cannot be said to be in the unlawful custody. The record shows that he is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand

A made by the said Court. A writ of Habeas Corpus is, in
the circumstances, totally mis-placed. Having said that,
the petitioner could and indeed ought to have filed an
application for grant of bail which prayer could be
allowed by the Court below, having regard to the nature
B of the offences allegedly committed by the petitioner and
the attendant circumstances. The petitioner has for
whatever reasons chosen not to do so. He, instead, has
been advised to file the present petition in this Court
which is no substitute for his enlargement from custody.
C Also, the Magistrate has acted rather mechanically in
remanding the accused petitioner to judicial custody
without so much as making sure that the remaining
accused persons are quickly served with the process of
the Court and/or produced before the Court for an early
disposal of the matter. The Magistrate appears to have
D taken the process in a cavalier fashion that betrays his
insensitivity towards denial of personal liberty of a citizen
who is languishing in jail because the police have taken
no action for the apprehension and production of the
other accused persons. This kind of apathy is regrettable
E to say the least. Also it is difficult to accept the contention
that the other accused persons who all belong to one
family have absconded. The nature of the offences
alleged to have been committed is also not so serious as
to probablise the version of the respondent that the
F accused have indeed absconded. However, the petitioner
is free to make an application for the grant of bail to the
Court concerned who shall consider the same no sooner
the same is filed and pass appropriate orders thereon
expeditiously. [Para 6] [921-E-H; 922-A-D]

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CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.)
No. 147 of 2013.

Under Article 32 of the Constitution of India.

H Lily Isabel Thomas for the Appellant.

Abhinav Mukerji, Bihu Sharma, Purnima Krishna for the Respondents. A

The Judgments of the Court was delivered by

N.V. RAMANA, J. 1. This habeas corpus petition is filed by one Saurabh Kumar who is in Koneila Jail, Dalsingsarai, District Samastipur (Bihar). B

2. In brief the case of the petitioner is that he was XII pass and wanted to leave the village in search of a decent job. In that connection he made an application for passport. On 30.6.2013 the police had called the petitioner to the Police Station for enquiry on his application for passport and after reaching inside the police station he was locked up. Thereafter on 1.7.2013 early morning, the petitioner was taken to the residence of one Shri Tripathi, Judicial Magistrate who is arrayed as 6th respondent in this writ petition. There, the petitioner was beaten with lathi by DSP, Manish Kumar Suman, who is arrayed as 9th respondent herein, in the presence of the said Judicial Magistrate and it is also alleged that while beating he was told that it is a reward for his parents for reporting or complaining against him to the Supreme Court, and insulted him by stating that low caste people should not become *malik* of the land of the upper caste people like *mausaji*. Thereafter, the petitioner was taken from the house of the Judicial Magistrate to the Koneila jail where he is kept under detention. The petitioner states that he was unnecessarily and illegally detained by the police. It is also a further case of the petitioner that the Judicial Magistrate, Shri Tripathi also caused prejudice as he is out of vengeance against his parents. When they approached the local MLA, the MLA contacted the SHO of Dalsingsarai, District Samastipur, and the police informed the MLA that there is no complaint against the writ petitioner and they are going to release him but in spite of repeated requests they have not released him. C
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3. Hence, the petitioner prayed for grant of a writ of habeas H

A corpus u/Art. 32 read with Art.14, 21 & 22 of the Constitution of India directing the Respondents to produce the petitioner Saurabh Kumar before this Hon'ble Court and also to direct the respondent-State to devise a way to prevent malicious arrest and detention by the police that too without maintaining necessary record and further to direct the State to pay the petitioner compensation considering that the detention is a black mark to his career prospects and future.

C 4. Initially there were eleven persons shown as respondents. But later on, the petitioner has withdrawn respondent nos. 3 to 11 from the array of parties.

D 5. After issuing notice two counter affidavits have been filed, one by respondent nos. 1, 2, 7 and 8 and the other by the sixth respondent, Tripathi, the Additional Chief Judicial Magistrate and Judge In-charge (Administration) Dalsingsarai, District Samastipur, Bihar. From these two affidavits, it appears that there were land disputes between petitioner's family and one Rama Kant Singh. A Mortgage Suit No. 30/94 was filed against Banwari Roy, who is the grand-father of the petitioner and obtained a decree against him on 28.2.1997 by the Munsif Court. Thereafter, the grandfather of the petitioner preferred Title Suit bearing T.A. No. 17/99 against the said Rama Kant which was subsequently dismissed by the learned Additional District and Sessions Judge-I, Samastipur by order dated F 1.6.2013.

G 6. The said Rama Kant Singh filed an execution case for delivery of possession of the land. The Munsif (Civil Judge, Jr. Division, Dalsingsarai) ordered for deputing the police force for the delivery of the land to the decree-holder. In view of the said order, the 6th respondent-Tripathi directed the Nazir, Civil Court, Dalsingsarai to execute the decree passed by the learned Munsif and on 3.3.2013 the said decree was executed which was confirmed by the Munsif by his order dated 15.3.2013.

H 7. Thereafter, one Mohan Kumar filed a complaint before

the Additional Chief Judicial Magistrate on 29.4.2013 which was referred to the police on 1.5.2013 P.S. No. 72/13 and was registered under Section 147, 148, 149, 323, 427, 504, 379 and 386 of the Indian Penal Code and under Section 27 of the Arms Act for necessary action and investigation under Section 156(3) Cr.P.C. In the said complaint it is stated that the complainant Mohan Kumar was working in his fields of which possession was handed over by execution of the decree. The writ petitioner Sumit Kumar alias Saurabh Kumar along with his family members Banwari Roy, Dinesh Roy, Rekha Devi, Golu Kumar, armed with lathis, pharsa, pistol beaten Mohan Kumar and snatched his wrist watch. It was also further alleged that at the gun point the petitioner party threatened the complainant therein to put his thumb impression on a stamp paper. On his refusal, the petitioner party threatened him to kill. The petitioner who is shown as accused in the said FIR was arrested in the said case on 30.6.2013. Thereafter, he was produced in the court of the Additional Chief Judicial Magistrate, Dalsingsarai, Samastipur on 1.7.20123. On orders passed by him (Annexures R.6/2 and R.6/3), the petitioner was remanded to judicial custody vide order dated 1.7.2013.

8. When the matter came up before this Court, the learned counsel appearing for the petitioner Smt. Lily Isabel Thomas contended that the petitioner is in illegal custody and sought a direction for his release. This Court has pointed out to the counsel for writ petitioner about the counter affidavits filed by the respondents which show that the petitioner is an accused in a criminal case which was registered under Sections 147, 148, 149, 323, 427, 504, 379 and 386 of IPC and under Section 27 of Arms Act and after such registration he was arrested and produced before the Addl. Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar and then he was detained in judicial custody. However, the counsel contended that a direction be given to the jailer-respondent No. 1 to produce the remand report of the petitioner as that itself shows the illegal detention. In spite of this Court's suggestion

A to the petitioner's counsel to approach the criminal court for obtaining bail, she repeatedly made request for the production of order passed by the Judicial Magistrate remanding the petitioner to jail.

B 9. We have heard the counsel for the State Government also who made a statement that the allegation made in the affidavit is false and the petitioner is an accused in a criminal case and therefore he is in judicial custody by virtue of an order passed by the Judicial Magistrate and there is no illegal detention as alleged by the petitioner.

C 10. After hearing the counsel and on perusing the affidavits and the material placed before us, it is evident that there are series of cases pertaining to land disputes between the family of the alleged detenu and other villagers. Civil cases were filed initially. During the pendency of a Suit, the father and mother of the petitioner filed a Writ Petition No. 197 of 2012 before this Court. In the said Writ Petition, this Court has passed the following orders:

E Order dated 9.5.2013

"Heard Ms. Lily Isabel Thomas, learned counsel for the petitioners and perused the record.

F The District Judge, Samastipur, Bihar is directed to pass an appropriate order in the pending appeal within a period of two weeks from the date of receipt/production of copy of this order.

G With the above observation, the applications are disposed of.

If any petition is filed by the applicants under Section 144 C.P.C., then the same may be considered on its own merits."

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Order dated 7.6.2013

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“List on 10.6.2013.

In the meantime and until further orders the petitioners shall not be dispossessed as the order dated 9.5.2013 indicates that this Court had already permitted the petitioners to approach the District court for disposal of their application. In the meantime, the learned counsel for the petitioners has sought protection from dispossession, which prayer prima facie appears to be reasonable. Suitable modification in this regard in the order may be considered on the next date when the application is listed. In the meantime and until 10.6.2013, status quo in the matter shall be maintained.

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The order may be given dasti.”

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11. A mortgage Suit No. 13/94 was also filed in which a decree was obtained against the grandfather of the petitioner and thereafter the grandfather of the petitioner Banwari Roy has also filed a civil Title Suit bearing T.A. No. 17/99 which was dismissed by the learned Additional District and Sessions Judge-I, Samastipur on 1.6.2013., taking into consideration the orders passed by this Court.

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12. After obtaining decree in the Suit for delivery of possession Rama Kant Singh has filed Execution proceedings on which the Munsif has ordered for police force for the delivery of possession which was executed on 3.3.2013 and thereafter again an incident had taken place on 1.5.2013. A complaint was given by one Mohan Kumar which was registered as FIR P.S. No. 72/13 under different Sections of the IPC and under Section 27 of the Arms Act. At that point of time, the petitioner was produced before the Additional Chief Judicial Magistrate. Then the Magistrate after examining him, directed to send him to jail by order dated 1.7.2013 (annexure R.6/3) . The said order reads as under:

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A “Sub Inspector, P.S. Ujiarpur arrested named accused of
this case, Sumit Kumar @ Saurabh Kumar aged 22 years
son of Shil Kumar Rai, Village Bhagwanpur Desua, P.S.
B Ujiarpur, District Samastipur and sent Forwarding Report
to the Court, seeking judicial remand of accused on the
basis evidence indicated in the report and arrest memo
along with reasonable escorting force. Accused has no
complaint against the escorting force. Nose, Ear, Eye etc.
of the accused is functional and on query by the Court,
C accused said he is able to defend his case. The accused
is remanded in this case and being sent to Up-Kara (Sub-
Divisional Jail), Dalsingsarai. Office clerk is directed to
issue custody warrant.

Fixed for 15.7.2013 for production of accused from jail.”

D 13. It is clear from the said narration of facts that the
petitioner is in judicial custody by virtue of an order passed by
the Judicial Magistrate. The same is further ensured from the
Original Record which this Court has, by order dated 9th April,
2014, called for from the Court of Additional Chief Judicial
E Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the
contention of the learned counsel for the petitioner that there
was illegal detention without any case is incorrect. Therefore,
the relief sought for by the petitioner cannot be granted. Even
though there are several other issues raised in the Writ Petition,
F in view of the facts narrated above, there is no need for us to
go into those issues. However, the petitioner is at liberty to
make an application for his release in Criminal Case No. 129/
13 pending before the Court of the learned Addl. Chief Judicial
Magistrate, Dalsingsarai.

G 14. After the conclusion of hearing, when the matter was
reserved for judgment and the pronouncement of judgment is
pending, a Crl.M.P. No. 12866 of 2014 has been filed by the
writ petitioner seeking reliefs which are not concerned with the
main prayer. The petitioner has also filed another Crl.M.P. No.
H 14378 of 2014 seeking release of petitioner’s mother and

grand father. In view of the foregoing discussion and the reasons given in the judgment, the reliefs so sought by the petitioner in the said CrI.M.Ps. also cannot be granted in the present habeas corpus writ petition. However, the petitioner is at liberty to avail remedies as available to him in accordance with law.

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15. Accordingly, the writ petition as well as the CrI.M.Ps. stand dismissed.

T.S. THAKUR, J. 1. I have had the advantage of going through the order proposed by my esteemed brother N.V. Ramana, J. I entirely agree with the view taken by him that the petitioner cannot be said to be in illegal custody so as to warrant the issue of a writ of Habeas Corpus. I would all the same add a few words of my own to what has already been stated by my esteemed and erudite brother.

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2. Petitioner's case is that he was called to the police station on 30th June, 2013 in connection with some enquiry about the issue of a passport. When he reached the police station, he was unceremoniously locked up only to be produced before Shri .Tripathi, Judicial Magistrate, Respondent No.6 in the writ petition, on the following date i.e. 1st July, 2013. He was, according to the averments in the petition, beaten up with lathis by one Manish Kumar Suman, DSP arrayed as respondent No.9 in the writ petition. The beating is alleged to have taken place in the presence of the Judicial Magistrate as a reward for the audacity of the petitioner's parents reporting against the Magistrate to the Supreme Court. The petitioner alleges that when his parents approached the local MLA for help, they were told that there was no complaint against the petitioner and that he will be released shortly. The detention of the petitioner, in the above circumstances, it is asserted, was without any lawful justification, whatsoever hence illegal.

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3. The respondents have appeared to file two separate counter affidavits from which it appears that not only are there

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A disputes between the family members of the petitioner, on the one hand, and one Rama Kant Singh, on the other, but on the complaint of one Mohan Kumar, filed before the Additional Chief Judicial Magistrate, the later had passed an order on 29th April, 2013, referring the matter to the police for investigation.

B Criminal Case No.72 of 2013 was on that basis registered in the police station against the petitioner for offences punishable under Sections 147, 148, 149, 323, 427, 504, 379 and 386 of the Indian Penal Code read with Section 27 of the Arms Act. The affidavits further reveal that the petitioner was, in connection

C with the said case, arrested on 30th June, 2013 and produced before the Additional Chief Judicial Magistrate, Dalsingsarai, Samastipur on 1st July, 2013 who remanded him to judicial custody by an order dated 1st July, 2013. From the original record summoned by us for perusal we find that the petitioner

D had been remanded to judicial custody from time to time by the Court concerned. In the meantime, a charge sheet was filed against the petitioner on 27th August, 2013 followed by a subsequent charge-sheet filed against the remaining accused persons on 3rd December, 2013. It is also manifest from the record that on a perusal of the FIR, charge sheets and the case

E diaries, the Magistrate has taken cognizance of the offences punishable under Sections 147, 148, 149, 323, 447, 504, 379 and 386 of the Indian Penal Code read with Section 27 of the Arms Act against the petitioner-Saurabh Kumar, Banwari Rai, Dinesh Rai, Rekhad Devi and Golu Kumar in terms of his Order

F dated 19th December, 2013. The Order passed by the Magistrate reads:

“Accused produced from Jail.

G Perused the FIR charge sheets and case diary.

After perusal prima facie case is made out against the accused (1) Sumit Kumar @ Saurav Kumar, (2) Banwari Rai (3) Dinesh Rai, (4) Rekha Devi and (5) Golu Kumar U/s 147, 148, 149, 323, 447, 504, 379, 386 IPC with

H Section 27 of the Arms Act

Hence cognizance taken against the accused persons in above sections. The case record is kept in personal file for trial and disposal (sic) issue summon to the unappeared against persons. A

Produce on 2-01-2014 for production and appearance. " B

4. Subsequent orders passed in the case show that the accused has been produced before the Magistrate concerned from time to time and remanded to custody, awaiting service of summons upon the remaining accused persons who are, according to the affidavits filed by the respondents, absconding. C

5. Two things are evident from the record. *Firstly*, the accused is involved in a criminal case for which he has been arrested and produced before the Magistrate and remanded to judicial custody, *Secondly*, the petitioner does not appear to have made any application for grant of bail, even when the remaining accused persons alleged to be absconding and remain to be served. The net result is that the petitioner continues to languish in jail. D

6. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of Habeas Corpus is, in the circumstances, totally mis-placed. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the Court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute E
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A for his enlargement from custody. We are also of the view that the Magistrate has acted rather mechanically in remanding the accused petitioner herein to judicial custody without so much as making sure that the remaining accused persons are quickly served with the process of the Court and/or produced before the Court for an early disposal of the matter. The Magistrate appears to have taken the process in a cavalier fashion that betrays his insensitivity towards denial of personal liberty of a citizen who is languishing in jail because the police have taken no action for the apprehension and production of the other accused persons. This kind of apathy is regrettable to say the least. We also find it difficult to accept the contention that the other accused persons who all belong to one family have absconded. The nature of the offences alleged to have been committed is also not so serious as to probablise the version of the respondent that the accused have indeed absconded. Suffice it to say that the petitioner is free to make an application for the grant of bail to the Court concerned who shall consider the same no sooner the same is filed and pass appropriate orders thereon expeditiously.

E 7. With the above observations I agree with the order proposed by my esteemed brother N.V. Ramana, J.

Bibhuti Bhushan Bose

With Petition dismissed.