



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Habeas Corpus Petition No. 156/2023

Kanhaiya Lal S/o Shri Basanti Lal, Aged About 70 Years,
Amlawad, District Pratapgarh.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary To The Government, Home Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Superintendent Of Police, Pratapgarh.
3. The Station House Officer, Police Station Pratapgarh, District Pratapgarh.

----Respondents

For Petitioner(s) : Mr. Rakesh Arora with
Mr. Hardik Gautam.

For Respondent(s) : Mr. M.A. Siddiqui, GA-cum-AAG.

Present in person : Mr. Amit Kumar, Superintendent of Police, Pratapgarh.
Mr. Ravindra Singh, SHO (the then), P.S. Pratapgarh, District Pratapgarh.

**HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**
Order

26/05/2023

1. This petition in the nature of habeas corpus has been filed by the petitioner with the allegations that an FIR No.192/2023 came to be registered *inter alia* against his son at 20:07 hours with allegations of offences punishable under Sections 452, 323, 307 and 34 IPC. Allegations were made that based on the said FIR, the respondent no.3 came to the hospital where the petitioner's son was admitted and arrested and shifted him to prisoners' ward, where he was handcuffed.

2. Further submissions were made that without any further action as envisaged under Section 57 of the Cr.P.C., petitioner's son has been detained in the hospital and has been handcuffed. The family members are not being permitted to meet him and, therefore, as the detention of the petitioner's son is in violation of





mandate of Article 22(2) of the Constitution of India and the handcuffing is contrary to the judgments of Hon'ble Supreme Court *inter alia* in *Prem Shanker Shukla v. Delhi Administration*: (1980) 3 SCC 526, therefore, the respondents be directed to produce the corpus before the Court from the illegal detention and be ordered to be set free.

3. By order dated 17.5.2023, copy of the petition was supplied to learned AAG, who was directed to complete his instructions in the matter / file factual report and the matter was fixed for 23.5.2023.

4. On 23.5.2023, on the allegations in the petition pertaining to detention without following the due process and handcuffing of petitioner's son, a factual report by the SHO, Police Station, Pratapgarh, was filed giving out details about the FIR lodged *inter alia* against the petitioner's son and indicating that he was admitted in the hospital and would be arrested only after his discharge from the hospital, however, not a word was indicated in relation to the allegations made in the petition regarding illegal detention of petitioners' son and his handcuffing. Therefore, on 23.5.2023, this Court, when counsel for the petitioner produced a picture of petitioner's son showing him in handcuffs tide to the hospital bed, the Registrar (Judicial) was directed to immediately require the CJM, Pratapgarh, to visit the hospital and find out the factual status pertaining to lodging of petitioner's son in prisoners' ward and being handcuffed.

5. A report was produced by the officiating CJM *inter alia* indicating that petitioner's son was lying on general ward bed no.36, his left leg was plastered and a handcuff was tide to the bed, though petitioner's son was not handcuffed and while taking

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picture he held the handcuffs in his hand. In the statement given by the petitioner's son, he indicated that the police people handcuff him every evening and open the same in the morning and that he was not permitted to meet the family members.

6. On receiving the said report, this Court directed the Superintendent of Police, Pratapgarh and SHO concerned of Police Station, Pratapgarh, to remain personally present before this Court on 25.5.2023.

7. On 25.5.2023, Mr. Amit Kumar, Superintendent of Police, Pratapgarh, was present before the Court, who informed the Court that SHO, Police Station, Pratapgarh and the Investigating Officer in the matter have been suspended and that inquiry against them would be initiated, however, due to paucity of time, the matter could not be taken up and the matter was ordered to be listed today.

8. Learned counsel for the petitioner made vehement submissions based on the report submitted by the officiating CJM, Pratapgarh, that the respondents have been acting in a wholly unconstitutional and high-handed manner, whereby, without showing arrest of petitioner's son, he has been detained at the hospital and is being handcuffed by the respondents, which is *ex-facie* in violation of the various directions issued by Hon'ble Supreme Court *inter alia* in the case of Prem Shanker Shukala (supra).

9. Further submissions have been made that as it has been established that the petitioner's son has been detained without following due process of law, the respondents be directed to set him at liberty, forthwith.





10. Learned AAG attempted to make submissions seeking to emphasize the involvement of the petitioner's son in the offences alleged in the FIR lodged against him and submitted that based on the allegations made and the fact that a handcuff was found attached to the bed in question, two persons have already been suspended and inquiry was initiated against them and based on the outcome, appropriate action would be taken against the delinquents, if any.

11. Submissions were made that the basic allegation about detention of the petitioner's son is factually incorrect, inasmuch as, he has not been arrested at any point of time and he was only admitted in general ward of the hospital and not in prisoners' ward as alleged and, therefore, the allegations about he being in detention, have no basis.

12. Further submissions were made that even in the report produced by the officiating CJM, he could visit the petitioner's son at the hospital without being obstructed / stopped by anyone, is proof enough to show that there is no restriction for anyone meeting petitioner's son and, therefore, the allegations about he being in detention / illegal detention are factually baseless.

13. It was emphasized that son of the petitioner has not been arrested so far and as per the wisdom of the investigating officer and the physical condition of the accused, he would be arrested, if required.

14. The Superintendent of Police, present in person, attempted to make submissions similar to what was submitted by learned AAG indicating that the accused – petitioner's son has not been arrested / detained, there is no restriction on anyone meeting him, the allegations about he being admitted to prisoners' ward

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are factually incorrect and, insofar as, the allegations pertaining to handcuffing are concerned, that would be appropriately investigated and to ensure that the investigation is not hampered, SHO and I.O. both have been placed under suspension. The S.P. indicating that he had joined about 4 months back, is a freshly recruited officer and submitted that principle of individual's liberty and following the due procedure of law while investigating the offences, are his top priority. He also submitted that he would ensure that, in this case, whoever is found guilty, would be dealt with appropriately.

15. We have considered the submissions made by learned counsel for the parties, the S.P. present in person and have perused the material available on record.

16. The petition essentially alleged wrongful detention of petitioner's son on the ground that he was being kept in prisoners' ward and resulting in, he being in virtual detention without following the due process of law and access to him by the family members has been totally stopped. Insofar as, the allegations pertaining to petitioner's son being kept in prisoners' ward at the general hospital, Pratapgarh, is concerned, the said allegations appears to be without any basis, inasmuch as, the bed-head ticket sent by the officiating CJM, nowhere indicates that he was admitted to the prisoners' ward, rather it indicates that he was admitted to the general surgery ward unit-I / male surgical ward. Even the medical officer in his statement recorded by the officiating CJM indicated that petitioner's son was at bed no.36 of the general ward since 2.5.2023, as such the plea raised pertaining to the alleged detention of the petitioner's son on





account of his having been lodged at the prisoners' ward and access to him being restricted, appears to be baseless.

17. Insofar as, the allegation pertaining to the handcuffing is concerned, Hon'ble Supreme Court in the case of Prem Shanker Shukala (supra) made it a constitutional mandate that no prisoner shall be handcuffed or fettered, routinely or merely for the convenience of the custodian or escort. The son of the petitioner in his statement indicated that he was being handcuffed in the evening, which was opened in the morning and the CJM on his visit found handcuffs hanging from his bed, though at that time he was not handcuffed. The said aspect regarding the availability of the handcuffs hanging from the bed and the allegation that petitioner's son was being handcuffed during the night, raises serious questions on the manner of working of the respondents in dealing with the life and liberty of the citizens, even if an FIR has been lodged against the petitioner's son, for whatever is the nature of allegations, the same does not and cannot authorize the police personals to violate the constitutional mandate. Specific directions in this regard were issued by Hon'ble Supreme Court about more than 40 years' back with regard to prisoners and in the present case, the petitioner's son has not even been arrested so far.

18. When admittedly the petitioner's son has not been arrested, the reason for which he has been handcuffed, as handcuffs were found hanging from the bed and as per the allegations were being used during the night for handcuffing him, makes the action of the respondents absolutely illegal and unconstitutional. The alleged action of handcuffing an injured (having fracture in proximal tibia), who is not even in a position to stand up or walk, leave

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aside, running and escaping and that also in a surgical ward of a general hospital, cannot but be termed as 'inhuman'.

19. The attempt made by the respondents to get away from the consequences of an illegal action by initiating inquiry and suspending certain officials, is essentially an eye-wash. The very presence of the handcuffs at the bed of the petitioner's son, who admittedly was lying on / admitted on the said bed since 2.5.2023, that also in a general surgical ward, clearly reflects its use by the respondents and that also in a case where admittedly the petitioner's son has so far not been arrested, which action of the respondents is clearly illegal.

20. The inquiry said to have been initiated, could only be for the purpose of fixing the liability for such illegality / unconstitutional action, stands firmly established. The handcuffs hanging by the bed at the surgical ward cannot be there only for the sake of it and admittedly petitioner's son the occupant of the bed was accused in an FIR lodged against him, as such the consequences of such illegality have to follow.

21. The submissions made by the Superintendent of Police, present in person before this Court, only reflects his apparent lack of experience in dealing with his subordinates, who have dared to indulge in such illegal and unconstitutional practice, that also at general hospital of the town i.e. under the very nose of the S.P. himself.

22. In view of what has been discussed hereinbefore, the action of the respondents in use of handcuffs is in violation of directions of Hon'ble Supreme Court and that also in an outrageous manner i.e. in full public view in a male general surgical ward, deserves condemnation and a swift and decisive action against those guilty

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for indulging in the said practice only with a view to overawe / intimidate and cause physical discomfort to the accused that also when on account of the fracture suffered by him, he is not even in a position to stand up and walk.

23. In view of the above discussion, the petition is disposed of. The respondents are directed to undertake the inquiry into the entire incident and against the delinquent officers including those who have been placed under suspension, in a most expeditious manner. The concerned Inspector General of Police shall personally monitor the progress of the said inquiry.

24. Further, it would be required of the Inspector General of Police to ensure that the directions issued by Hon'ble Supreme Court are followed in letter and spirit throughout his jurisdiction and none is handcuffed or fettered without following the due procedure prescribed for the purpose.

25. It goes without saying that as the claim of the respondents is that petitioner's son is not under detention, he is free till such time that any action in accordance with law is taken by the police in relation to the FIR lodged against him. Further, as admittedly the petitioner's son is in the general male surgical ward and apparently no restrictions were found during visit by the officiating CJM to the ward, the petitioner and other family members are free to visit and meet him as generally permissible by the hospital authorities.

(RAJENDRA PRAKASH SONI),J

69-Sumit/-

(ARUN BHANSALI),J