

MANU/SC/0332/2021

Equivalent/Neutral Citation: 2021(2)RCR(Criminal)869

IN THE SUPREME COURT OF INDIA

Writ Petition (Criminal) No. 307 of 2020

Decided On: 28.04.2021

Kerala Union of Working Journalists **Vs.** Union of India (UOI) and Ors.

Hon'ble Judges/Coram:

N.V. Ramana, C.J.I., Surya Kant and A.S. Bopanna, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Wills Mathews, Koshy John, Advs. and Shree Pal Singh, AOR

For Respondents/Defendant: Garima Prashad, AOR, Tushar Mehta, SG, Rajat Nair, Kanu Agrawal, Garima Prasad, Advs., B.V. Balaram Das and Shree Pal Singh, AORs

Case Category:

HABEAS CORPUS MATTERS

ORDER

1. This Writ Petition instituted Under Article 32 of the Constitution of India, seeks a writ of habeas corpus for the release of alleged detenu, namely, Sidhique Kappan son of Muhammed, who is stated to be a journalist and a member of the Petitioner Association-Kerala Union of Working Journalists.

2. The Writ Petition has been filed on the premise that the above stated detenu was taken into illegal custody on 5.10.2020 at 16.50 hours without serving any notice or order as envisaged Under Section 107 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The alleged detenu and his associates were, at the time of detention, going to Hathras (U.P.) to report a gruesome case of rape and murder of a young girl.

3. The State of U.P. in its counter affidavit dated 20th November, 2020 has strenuously controverted the allegation of illegal detention. A supplementary affidavit has also been filed by the State of U.P. on 09.12.2020 explaining that the alleged detenu has been lawfully arrested; firstly, Under Section 107/151 Code of Criminal Procedure and thereafter in the FIR No. 199/2020 dated 07.10.2020 registered at Police Station Manth District Mathura Under Sections 153A, 295A and 124A of the Indian Penal Code, Section 17, 14 of Unlawful Activity prevention Act, 1967 and Sections 65, 72, 76 of Information Technology Act, 2008.

4. At the outset, the Respondent State vehemently contested the maintainability of the petition by the Petitioner-Association. However, it may be noticed that during the pendency of these proceedings, the wife of the alleged detenu Mrs. Raihanath has also applied for intervention pleading immediate release of her husband. Hence the issue regarding maintainability of the petition filed by the Petitioner-Association as contended by the Respondent has lost its significance. Apart from the above, since the filing of the present Writ Petition, various events have taken place such as the completion of investigation, filing of charge sheet etc., which mandates this Court not to examine the

aforsaid issue at this stage.

5. The Petitioner-Association subsequently moved an application for interim directions and to release Sidhique Kappan on bail owing to his deteriorating health condition. This application too has been hotly contested by the State of U.P., who has on our directions placed the medical reports of Sidhique Kappan on record. On perusal of these reports, we find that Sidhique Kappan had tested COVID-19 Positive on 21st April, 2021, was having fever (T-102F) and had also suffered an injury as he fainted and fell down in the bathroom for which intervention of a surgeon was suggested. The patient was referred to K.M. Medical College and the 'bed head ticket' reveals Sidhique Kappan as having multiple health issues like diabetes, heart ailment, blood pressure and bodily injury. However, the next set of medical reports and the additional affidavit circulated by the State this morning show that he has tested COVID-19 Negative.

6. We have heard Mr. Wills Mathews, learned Counsel appearing for the Petitioner(s) and Mr. Tushar Mehta, learned Solicitor General appearing for the State of Uttar Pradesh. It may be noted that various legal issues were advanced before us, however the enquiry before this Court is limited to providing adequate health care to the Accused, in line with the limited relief, ultimately sought by the counsel for the Petitioner. Accordingly, this Court is not called to examine detailed facts on merits.

7. From the records, it is clear that the Accused was produced before the jurisdictional court after arrest. FIR was registered thereafter. Presently, the investigation against the alleged detenu is complete and a voluminous chargesheet running into over 5000 pages has been filed. In these circumstances, it would not be prudent for this Court to continue the present petition, any further.

8. Moreover, the alleged detenu has got alternative remedies including the right to approach the competent court for the grant of bail and/or the High Court Under Article 226 of the Constitution of India and/or Under Section 482 Code of Criminal Procedure for redressal of his grievances. Still further, it may also be relevant to note that the co-Accused of the alleged detenu have already adopted such a recourse and sought their bail before the Competent Court.

9. We are of the view that owing to the apparent precarious health condition of the arrestee, it is necessary to provide adequate and effective medical assistance to him and to allay all apprehension relating to his health, it would be in the interest of justice to shift Sidhique Kappan - the arrestee, either to Ram Manohar Lohia Hospital or to All India Institute of Medical Sciences (AIIMS) or any other Government Hospital in Delhi for the proper medical treatment. The needful shall in this regard be done at the earliest.

10. We deem it appropriate to issue the above direction even though Sh. Tushar Mehta, learned Solicitor General has emphasised that adequate medical treatment is being provided as in the case of all other jail inmates and if need be further facility shall be extended to the arrestee. We state that the most precious fundamental 'right to life' unconditionally embraces even an undertrial. The consideration made herein is keeping in view the peculiar facts and circumstances of this case. Merely because the other jail inmates are receiving treatment similar to the arrestee need not deter us.

11. Needless to say, as soon as Sidhique Kappan recovers and the Doctors certify him fit to be discharged, he would be shifted back to Mathura Jail. Sidhique Kappan is meanwhile at liberty to avail appropriate remedy in accordance with law before the concerned courts for the grant of bail or to challenge the proceedings or for quashing

the chargesheet. In case such petition/Application is filed by him, it shall be considered and decided by the concerned court on its own merits and in accordance with law.

12. It is clarified that we have not expressed any views on the merits of the contentious issues raised by both sides.

13. With the above directions, the Writ Petition is disposed of.

14. The pending application(s), if any, shall stand disposed of.

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