

(2011) 12 SC CK 0052

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No's. 310 of 2005 and 82 of 2010

Bhim Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Egress and Internal Movement (Control) Ordinance, 2005 — Section 2, 3
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 23

Citation : (2012) 2 SCALE 440(1)

Hon'ble Judges : R.M. Lodha, J;H.L. Gokhale, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. On November 11, 2011, Prof. Bhim Singh-petitioner in-person submitted that four female prisoners, namely. Baby Hina d/o Saif-ur-Rehman, (2) Fatima Saddique d/o Choudhary Mohd. Saddique, (3) Hajra Mohammad Mamta w/o Saddique, and (4) Mahajabeena d/o Ghulam Rasool have been languishing in different jails unattended and without trial for many years.

2. On that day we directed the counsel for the Union of India to furnish the present status of these four female prisoners in the additional affidavit and show cause why they should not be repatriated to their country without any further delay.

3. In response thereto, an additional affidavit has been filed by the Director (Foreigners) in the Ministry of Home Affairs, Government of India.

4. As regards Baby Hina d/o Saif-ur-Rehman, it is stated that she is 4-1/2 years old and she is with her mother, who is convicted under Sections 21/23 of the Narcotic Drugs and Psychotropic Substances Act, at Central Jail, Amritsar. As per Punjab Jail Manual, any female prisoner may be allowed to retain her child with her until it is four or with the approval of the Superintendent even upto six years of age if she so desires. It is stated that insofar as Ministry of Home Affairs is

concerned, it has advised the Government of Punjab to produce the child before the Child Welfare Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Amendment Act, 2006.

5. Two things emerge from the additional affidavit insofar as Baby Hina is concerned. One, she is not a prisoner, and two, she is staying with her mother as she is hardly 4-1/2 years old. As a child, obviously, her welfare is of paramount importance and, therefore, the advice of the Ministry of Home Affairs to the Government of Punjab to produce her before the Child Welfare Committee appears to us to be quite appropriate. We give liberty to Prof. Bhim Singh to apply for any direction with regard to Baby Hina which is necessary for her welfare.

6. The two female prisoners at Nos. (2) and (3) above, are convicts under Sections 21/23 of the Narcotic Drugs and Psychotropic Substances Act and have been sentenced to suffer 10 years rigorous imprisonment and six months and fine of Rs. 1 Lakh each. Fatima Saddique d/o Choudhary Mohd. Saddique is presently undergoing sentence and is lodged in Central Jail, Amritsar. If she pays fine, her sentence will be completed on November 10, 2016. Similarly, Hajra Mohammad Mamta w/o Saddique is also lodged in the Central Jail, Amritsar. She is undergoing sentence and she would complete her sentence on November 10, 2016 if she pays fine. With regard to these two female prisoners, in the circumstances noticed above, question of repatriation before completion of their sentence does not arise.

7. Insofar as Mahajabeena d/o Ghulam Rasool is concerned, it is stated that she is an accused in FIR No. 48/2009 u/s 2/3 Egress and Internal Movement (Control) Ordinance, 2005 and the offence under the Passport Act and Unlawful Activities Act. She was granted bail by Sessions Judge, Kulgam and she is not lodged in any jail. Since she is facing trial in FIR No. 48/2009, we are satisfied that she also cannot be repatriated to her country at this stage.

8. As regards other directions let the matters come up for consideration on January 24, 2012.