

(1993) 06 GUJ CK 0053
In the Gujarat High Court

Omprakash Shyamlal Mishra

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-06-1993

Acts Referred:

Citation : (1994) 1 GLR 812

Hon'ble Judges : K.R. Vyas, J;K.G. Shah, J

Bench : Division Bench

Judgement

K.G. Shah, J.—Om Prakash Shyamlal Mishra has, on June 17, 1993, preferred this petition for a writ of Habeas Corpus for the release of his brother Vedprakash Shyamlal Mishra. In the petition, the petitioner averred that his brother Vedprakash has been taken away by Police Inspector Mr. Parmar, respondent No. 2 herein at about 9-00 p.m. on June 13, 1993, from near a Pan Parlour situated near Satellite Tower in Satellite area in the City of Ahmedabad, and thereafter Vedprakash was brought to house of the petitioner at about 11-00 p.m. Then Vedprakash was taken away by respondent No. 2 According to the petitioner when he inquired from respondent No. 2 at his house about the reason why Vedprakash was wanted by him, respondent No. 2 did not give any answer. The petitioner tried to find out his brother Vedprakash at Satellite Police Station on the next day. However, Vedprakash was not available there. Therefore, at about 4-00 p.m. on June 14, 1993, Om Prakash sent a telegram to the Commissioner of Police, Ahmedabad City stating that his brother Vedprakash has been taken away by respondent No. 2 on June 13, 1993, and since then the whereabouts of Vedprakash were not known. According to the petitioner, thereafter he tried hard to find out the whereabouts of his brother Vedprakash and on June 15, 1993, he came to know that his brother Vedprakash had been detained by respondents Nos. 2 and 3 (respondent No. 3 is the D.I.G.). As averred by the petitioner, besides his brother Vedprakash, some four other boys have also been arrested alongwith Vedprakash, and three out of those four Other persons have been released by respondents Nos. 2 and 3 on June 15, 1993 at night. Those three boys on their release informed the petitioner that the petitioner's brother

Vedprakash was being beaten by the Police and had received injuries on the internal part of his ear and that, therefore, his hearing capacity had been impaired. Those three boys also informed the petitioner that Vedprakash had been arrested in connection with an offence of sale of revolver; however, no formal complaint had been lodged. It is also stated in the petition that on June 16, 1993, the petitioner, in company of his sister Nikhileshkumarii approached respondent No. 3, and respondent No. 3 informed the petitioner that an inquiry was going on and that after finishing the inquiry his brother (Vedprakash) would be released. However, as stated in the petition, respondent No. 3 permitted the petitioner to send tiffin for Vedprakash. On these main allegations, the petitioner has prayed for the following reliefs in the petition:

(a) That a writ of Habeas Corpus be issued directing the respondents to release the petitioner's brother Vedprakash Sbyamlal Sharma forthwith;

(b) That pending the hearing and final disposal of this petition, the respondents be directed to produce the petitioner's brother Vedprakash before this Hon''ble Court and the respondents be further directed to send his brother Vedprakash to the Civil Hospital for medical check up;

(c) To grant such other and further relief as the nature of the case may require.

2. As said above, the petition came to be filed on June 17, 1993. On the same day, this Court passed the following order:

Notice returnable on 18-6-1993. Mr. Y.F. Mehta, learned A.P.P. waives service. In the meanwhile, respondent No. 2, Police Inspector, Anti-Terrorist Squad, LIB, Ahmedabad is directed to take immediate action to produce the custody of boy Vedprakash Shyamlal Mishra before this Court tomorrow, i.e., on 18-6-1993. Respondent No. 2 is directed personally to remain present before this Court with all connected papers on 18-6-1993.

3. Pursuant to the above order passed by this Court, on June 18, 1993. at about 2-45 p.m., respondent No. 2 produced Vedprakash before us. We questioned Vedprakash as also respondent No. 2. Vedprakash made a grievance of the fact that he had been whisked away by respondent No. 2 to the office of respondent No. 3 where he was repeatedly beaten by respondent No. 2 as also by his staff members sometimes in the presence of respondent No. 2 and sometimes in the absence of respondent No. 2. As prima facie, we found some substance in what Vedprakash stated, we in our chamber, in the presence of Mr. Y.F. Mehta, learned A.P.P. and Mr. H.L. Patel, learned Advocate for the petitioner, examined the person of Vedprakash and we found tell-tale marks of injuries on his person. We immediately, therefore, sent him for medical examination, and the Superintendent, V.S. Hospital, Ahmedabad, was kind enough to constitute a panel of Specialist Doctors, who examined Vedprakash on June 18, and June 19, 1993. The result of the examination has been produced before us and forms part of the record.

4. As stated above on June 18, 1993, we also questioned Mr. Parmar, respondent No. 2, and in certain respects his answers were found to be unsatisfactory. While directing the medical examination of Vedprakash to be carried out at V.S. Hospital, Ahmedabad, therefore, we passed certain interim orders and the matter has been fixed today for bearing.

5. Affidavit of Vedprakash has been produced. Affidavit of Mr. Parmar has been produced. Further affidavit of Vedprakash accompanied by certain documents has also been produced. We have gone through these papers.

6. The main purpose of a writ of Habeas Corpus is to obtain the release of a person who has been illegally detained against his wishes or without his consent. In the present case, a grievance is made of the fact that respondent No. 2 had illegally detained Vedprakash. It was with that grievance that the main relief prayed in the petition is aimed at the release of Vedprakash from custody. At about 2-45 p.m. on June 18, 1993, as said above, when Vedprakash was produced before us by respondent No. 2, in an answer to the question by the Court, respondent No. 2 stated that he had taken away Vedprakash for interrogation and thereafter from time to time he had released him and then summoned him for interrogation. Respondent No. 2 also stated that then he no longer needed Vedprakash for interrogation at that juncture, and he did not need Vedprakash to be before him for any further interrogation. With these statements coming from respondent No. 2, the release of Vedprakash was obvious. As a matter of fact, under the Court's order, Vedprakash was taken to V. S. Hospital for examination. A part of the medical examination was conducted on that day, and then he was released. He was a free bird. Under the orders of the team of Doctors, he again appeared before that team on the next day, i.e., on June 19, 1993, and it is undisputed before us today that right from about 2-45 p.m. on June 18, 1993, Vedprakash is a free man, not in anybody's custody. In other words he has been released. The main objective of the writ of Habeas Corpus has, therefore, been achieved, and we need not say anything further in that matter at this juncture.

7. However, two or three distressing features stare us at our face.

8. Mr. V.H. Patel, learned Advocate for the petitioner very strenuously contended that Vedprakash had been illegally detained by respondent No. 2 from the night of June 13/14, 1993 till about 2-00 p.m. on June 18, 1993, when Vedprakash was brought to the Court by respondent No. 2. According to Mr. Patel, therefore, we should record a finding that Vedprakash was illegally detained by respondent No. 2 in custody, during the aforesaid period between about midnight of June 13/14, 1993 and about 2-00 p.m. on June 18, 1993.

On the other hand Mr. Y.F. Mehta, learned A.P.P. on the strength of the statements made by respondent No. 2 before us on June 18, 1993, and the affidavit of respondent No. 2 filed in this case canvassed that Vedprakash was never detained in custody except for a lawful cause for short spans of time for

the purpose of interrogation and that every day he was released by respondent No. 2, no sooner the interrogation was over, and that on June 18, 1993, as Vedprakash did not turn up at the office of respondent No. 2 in response to the summons issued by respondent No. 2 to Vedprakash, respondent No. 2 had to go in search of Vedprakash, and respondent No. 2 located Vedprakash near Nehru Nagar after 1-00 p.m. On June 18, 1993, and then respondent No. 2 brought Vedprakash to this Court and produced him before the Court, as he was duty bound to do so in response to the Court's order.

9. On the question whether Vedprakash was detained for all this period from the night of June 13, 1993 upto about 2-00 p.m. on June 18, 1993, there is word against word. We will of course, refer to the beating and ill-treatment meted out to Vedprakash hereafter. But so far as detention is concerned, the case of respondent No. 2 is that, "Yes" : he did take away Vedprakash on the night of June 13, 1993 but released him sometime later after interrogating him, and on every successive dates he used to summon Vedprakash for interrogation, and record his statement, and he followed the method of cross-check and cross-interrogation qua Vedprakash and many other accused and that was necessitated in view of the large scale racket in arms and gun running to which, prima facie evidence shows that Vedprakash is a party. According to respondent No. 2, the investigation of the offences under the Arms Act and sale of arms resorted to with a view to facilitating terrorist activities is on way. Therefore, it was absolutely necessary to resort to extensive interrogation of Vedprakash and, therefore, he was constrained to summon Vedprakash at the office of respondent No. 3 on every successive date after 13-6-1993. Respondent No. 2 denies his having detained Vedprakash continuously as alleged in the petition as also in the affidavit of Vedprakash.

10. In view of these contradictory stands as they appear in the documents on record, and more particularly in view of the fact that the release of Vedprakash has already been achieved, we do not propose to say anything in this judgment on the question whether Vedprakash was in fact continuously detained in Police custody, and if yes, whether the detention was illegal. We would leave the matter about detention at that for, on the evidence and material on record, it would be too hazardous to pronounce upon the rival versions of the parties.

11. There is yet another distressing feature of the matter and it is about beating and ill-treatment. As said above, on June 18, 1993, when Vedprakash was brought before us, he made a pointed grievance of the fact that he was severely beaten by respondent No. 2 and his subordinates under his instructions sometimes in his presence and sometimes in his absence. On this statement, coming from Vedprakash, we ourselves examined his person in presence of the learned Addl. Public Prosecutor and the learned Advocate for the petitioner, and found tell-tale marks of injuries on his person. We, therefore, directed the medical examination of Vedprakash to be carried out, and as said above, a panel of Doctors constituted by the Superintendent, V.S. Hospital, examined him on

June, 18/19 1993. The medical report of the examination shows that there were no external marks of injury over the skull. There was no evidence of any intracranial problem in the petitioner at the stage when the panel of Doctors examined Vedprakash. Skull X-rays were normal. Fundi were normal. There were no external marks of injury on chest and abdomen. Abdominal examination showed no clinical evidence of any organ injury. Vedprakash was able to walk normally. However, there were irregular bruise marks over both the buttocks of about 6 cms. x 4 cms. There were no external marks of injury over both heels, spine, hips, knees, ankle and feet. Upper extremities were normal. There was no evidence of bony injury. There was no neurovascular deficiency. The X-rays of hips with pelvis and the upper femoral were all normal. X-ray of both heels with feet was normal.

On E.N.T. Examination, no external marks of injury over left ear were seen. However, on the left tympanic membrane, blood clot was found and left ear drum was congested. Hearing test with 512 tuning fork suggested mild hearing impairment on left side and normal hearing on right side. On Audiological examination mild conductive hearing loss with 30 dB Air bone gap was found on left side. There was ecchymosis over the left lower eyelid. Left orbital margin was intact. Left eye ball movements were normal. There was no tenderness of the maxillary sinus.

In the opinion of the Doctors on the panel, the findings as indicated above, suggested that Vedprakash had blunt injuries over the left side of the face, left ear and both gluteal regions. However, the exact mode of the injury and the duration could not be ascertained. The injuries were simple in nature and reversible.

12. As said above, at about 3-00 p.m. on June 18, 1993, we ourselves noticed some tell-tale marks of injuries on the person of Vedprakash. The medical examination also showed marks of injuries on the buttocks or gluteal region, left ear as also over the left eyelid. These facts leave no room for doubt that Vedprakash was physically manhandled by someone. Respondent No. 2 in his affidavit has stated that at no point of time, either prior to interrogation or after interrogation, Vedprakash was ever manhandled or beaten by him. As against this, Vedprakash stated to us that it was respondent No. 2 who beat him and under the orders of respondent No. 2 his subordinates also beat him sometimes in his presence and sometimes in his absence. In view of the overall picture that emerges from the record, we find it difficult to accept the denial of respondent No. 2 of the allegation of Vedprakash having been beaten or manhandled. Even on June 18, 1993, we had not been satisfied with the answers given by respondent No. 2 before us. At that time, respondent No. 2 had stated before us that on the evening of June 14, 1993, he released Vedprakash after recording the statement of Vedprakash and issued a summons to Vedprakash to appear before him on the next day, i.e., on June 15, 1993, as material disclosing the complicity of Vedprakash in serious offences of large scale racket in arms had

been gathered. On this statement being made by respondent No. 2, we asked a further question to him as to why was it that though, as stated by him material disclosing Vedprakash's complicity in serious offences of large scale racket in arms came to light, he did not arrest Vedprakash, and to that, the answers given by Mr. Parmar were as vague as anything. We would like to emphasize this aspect of the matter for the reason that respondent No. 2 has appeared to us, as a man who does not fully know his duty and responsibility. His stand in his affidavit that Vedprakash was never beaten before or after the interrogation, to say the least, cannot be accepted in view of the marks of injuries on the person of Vedprakash which we noticed in the presence of the learned A.P.P. and which came to be confirmed as a result of the medical examination adverted to by us hereinabove. Prima facie, therefore, we should be inclined to say that Vedprakash was beaten while he was in Police custody. In the view of the matter that we are inclined to take, we think it is not necessary for us to decide whether it was respondent No. 2 who beat Vedprakash or whether Vedprakash was beaten by some others in the Police force. Once again at the cost of repetition, we would say that the main objective of a writ of habeas corpus has been achieved as Vedprakash has been released. Mr. Patel, learned Advocate for the petitioner, however, very strenuously contended that if not on the ground that Vedprakash was illegally detained, at least on the ground that he was beaten while he was in custody, compensation should be awarded to Vedprakash, and respondent No. 2 and the State of Gujarat should be directed to pay appropriate amount of compensation to Vedprakash. At the first flush, one would be tempted to accept this submission of Mr. Patel. But in view of what we would presently advert to, we are not inclined to accept this submission of Mr. Patel. Before we proceed farther for examining the submission of Mr. Patel, we would like to record that Mr. Patel, in support of his submission, relied upon the decision in the cases of:

(1) Rudul Sah Vs. State of Bihar and Another, ; and

(2) Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, .

13. We have gone through these judgments and we do not find they have any assistance to render to the submission of Mr. Patel for, as fairly conceded by Mr. Patel, on the score of detention which according to him was illegal, he may not press for the prayer for compensation. But on the score of Vedprakash having been beaten by the Police while he was in Police custody, he would strenuously submit that this Court should award compensation to Vedprakash to be paid to him by respondent No. 2 or by respondent No. 1-State of Gujarat. None of these two judgments in the cases (1) Rudal Sah (supra.) and (2) Bhim Singh, M.L.A., (supra), deal with a case of beating and physical ill-treatment to a person while in Police custody. They are cases of illegal detention simpliciter. In Rudal Sah's case, the accused was acquitted by the Court of Sessions on June 3, 1968. However, he came to be released from the Jail on October 16, 1982, i.e., more than 14 years after he was acquitted. Thus there was a long illegal incarceration, and illegal detention of a man who was acquitted by the Court of Sessions. The

period of detention was almost 14 years and as said above, it was not a case of physical ill-treatment having been meted out to Rudal Sah.

14. In Bhim Singh, M.L.A., the arrest of the person was found to be with mischievous and malicious intent. Bhim Singh of that case was a Member of the Legislative Assembly of Jammu & Kashmir. He had incurred the wrath of the powers that be. Those powers were bent upon preventing Bhim Singh from attending the session of the Legislative Assembly of Jammu & Kashmir which was to meet on September 11, 1985. On August 17, 1985, the opening day of the budget session of the Legislative Assembly, Bhim Singh was suspended from the Assembly. He questioned that suspension in the High Court. The order of suspension was stayed by the High Court on September 9, 1985. On the intervening night of 9th and 10th September, 1985, he was proceeding from Jammu to Srinagar. En route, at about 3-00 a.m. on September 10, 1985, he was arrested at a place called Qazi Kund about 70 Kms. from Srinagar. He was taken away by the Police and as it was not known where he had been taken away and as the efforts to trace him proved futile, his wife Smt. Jayamala, acting on his behalf, filed an application for issuance of a writ to direct the respondents to produce Shri Bhim Singh before the Court and to declare his detention illegal, and to set him at liberty. State of Jammu & Kashmir through the Chief Secretary, the Chief Minister, the Deputy Chief Minister and the Inspector General of Police, Jammu & Kashmir were impleaded as respondents to the petition. At first the Court directed a notice to be issued to the respondents and the Court also directed the Inspector General of Police to inform Smt. Jayamala as to where Shri Bhim Singh was kept in custody. On September 16, 1985, Shri Bhim Singh was released on bail by the learned Additional Sessions Judge of Jammu before whom he was produced. In the proceedings in the habeas corpus petition, Bhim Singh filed an affidavit inter alia stating that he was kept in Police lock-up from 10th to 14th and that he was produced before the Magistrate for the first time only on the 14th. Thereafter on 25th September, 1985, the Court issued a notice to the Director General of Police, State of Jammu & Kashmir as also to the Superintendent of Police, Anantnag, Inspector of Police, and to some other Police Officers. From the affidavits filed in the case, it transpired that an F.I.R. u/s 153A of the Ranbir Penal Code was registered against Bhim Singh on September 9, 1985, on the allegation that he had delivered an inflammatory speech in the public meeting held near Parade Ground, Jammu on September 8, 1985. The Officer-in-charge of the Police Station brought the matter to notice of the Senior Superintendent of Police, who in turn informed the Dy. Inspector General of Police. On September 10, 1985, a requisition for the arrest of Bhim Singh was sent to the Superintendent of Police. On these main facts and other supplementary facts as they appeared on the record, Their Lordships of the Supreme Court, ultimately in para 3 of the report, observed thus:

However, the two Police officers, the one who arrested him (Bhim Singh) and the one who obtained the orders of remand, are but minions in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies

elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. 7 but we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah Vs. State of Bihar and Another, and Sebastian M. Hongray v. Union of India AIR 1184 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous and malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case., We order the first respondent, the state of Jammu & Kashmir to pay to Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.

As the facts in the case of Shri Bhim Singh show, though he was an M.L.A. he had incurred the wrath of the powers that be, and those powers were bent upon preventing him from attending the sessions of the Legislative Assembly of Jammu and Kashmir and towards that end in view, firstly Shri Bhim Singh came to be suspended from the Assembly. When Bhim Singh obtained an order of stay from the High Court against the suspension order, a second device was found to arrest him and to detain him so that he may not be able to attend the Assembly session. These facts clearly show that the arrest and detention were both motivated by mischievous and malicious intentions. It was on such facts that Their Lordships of the Supreme Court found the case before them to be appropriate for awarding compensation to Bhim Singh.

15. In the case before us, there are no parallels to be drawn from Bhim Singh's case. As respondent No. 2 would have it, a large scale racket in the business of arms with a view to facilitating terrorist activities in the State is going on, and material showing the complicity of Vedprakash in such offence had been disclosed upon interrogation of persons, and crosschecking and therefore, he had whisked away Vedprakash to the office of his Superior Officer, and he interrogated Vedprakash from time to time on different dates. Even if, on these facts, there may be room for saying that Vedprakash was detained and illegally detained, we do not think this to be a case wherein Vedprakash should be compensated by this Court in these proceedings, by passing an order directing either respondent No. 2 or respondent No. 1-State Government to pay him compensation. Similarly, though possibly it cannot be denied that Vedprakash was beaten and ill-treated while he was in Police custody, in absence of sufficient material, we are not inclined to pass orders directing respondent No. 2 and/or respondent No. 1 to pay any compensation to Vedprakash. We adopt this course

firstly for the reason that on one hand, Vedprakash wants us to believe that it was respondent No. 2 and his subordinates who ill-treated him, and on the other, there is a denial of that allegation by respondent No. 2. We may say that we are not much impressed by that denial of respondent No. 2. At the same time, we are not in a position to say with certainty that it was respondent No. 2 who physically ill-treated Vedprakash. The question as to who physically ill-treated Vedprakash or under whose orders Vedprakash come to be physically ill-treated is a vital question which would require elaborate investigation, which could be done only at a full length trial in a civil suit. That would be open to Vedprakash, if he is so advised, to file such a civil suit for getting compensation. Essentially grant of compensation for the wrong done to a person is within the domain of a Civil Court in a civil suit to be filed for the purpose. If and when such a suit is filed, the matter would be thrashed out from all relevant angles; Evidence would be permitted to be led, the defendants in the suit would have an opportunity to meet with the allegations; There could be examination, cross-examination and re-examination of the witnesses; There could be closer scrutiny of the pieces of evidence, and in the ultimate analysis, the Civil Court can come to one conclusion or the other, on the question whether the person who claims compensation is entitled to a decree granting him compensation. It would be in a rare case that in a writ jurisdiction this High Court would pass an order directing compensation to be paid to the person who is said to have been illegally detained or who is said to have been ill-treated while in detention. We are alive to the fact that as observed by the Supreme Court, the Court in writ jurisdiction has powers to award compensation. But that we understand from Rudal Sah and Bhim Singh, has to be resorted to only in exceptional type of cases, and this Court should not be allowed to be converted into a Civil Court trying Civil suits for compensation. Even at the cost of repetition, we would say that if Vedprakash is advised to file a civil suit for compensation, he may do so, and we are sure that the Civil Court, will decide his case, purely on merits and uninfluenced by what we have observed in this judgment. We may say here that we are not inclined to pass any direction as regards compensation to be paid to Vedprakash. At the same time we do not want to foreclose his right to claim compensation if he is otherwise entitled to.

16. To summarise, and to put an end to the matter, we would say that Vedprakash has now been released. There is, therefore, no need to pass any order or direction or issue any writ for his release. As said above, we do not propose to say whether he was detained continuously or whether he was detained illegally, and this being a matter in writ jurisdiction, we refrain from passing any direction as regards compensation, though Mr. Patel, the learned Advocate for the petitioner has very strenuously tried to persuade us to issue such a direction.

In the result, we discharge the Notice we have earlier issued on this petition. The proceedings of this petition are thus disposed of.