
(1998) 09 AP CK 0084

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22982 of 1998

Yahya Bin Saleh

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 6 ALD 801 : (1998) 6 ALD 80 : (1998) 6 ALT 415

Hon'ble Judges : Y.V. Narayana, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. Mohd Abdul Jabbar, for the Appellant; Addl. Advocate-General, for the Respondent

Judgement

Motilal B. Naik, J.—This writ of Habeas Corpus seeking a direction to respondents 2 to 4 to release the three alleged detenus viz., Yusif Bin Yahya, 2) Ayub Bin Yahya and 3) Mohd. Ghouse, who are the sons of the petitioner from the illegal confinement and a direction to produce the alleged detenus before this Court and also to pass appropriate direction, is filed by the father of the alleged detenus. According to the petitioner on 10-8-1985 he was attending to his business along with his three sons i.e., the alleged detenus. On the same day around 4 p.m a Police Inspector along with a Sub-Inspector of Police and 8 to 10 Police Constables came to his shop located in Charkaman area of Charminar and caught-hold of his three sons who are alleged to be detenus. When enquired about the conduct of the police personnel it was known that the Police are from Task Force of West Zone and that the petitioner was asked to meet the Deputy Commissioner of Task Force team at his office situated at Begumpet, Hyderabad. According to the petitioner he went to the office of the Deputy Commissioner of Police, Task Force, around 5-30 p.m. on the same day. But, however, he could not find the Deputy Commissioner of Task Force, but saw his three sons detained in the lockup and were subjected to ill-treatment and physical torture. According to him the Police personnel again required the petitioner to come on 11-8-1998 at about 10-30 a.m. He accordingly went to the Office of the Deputy

Commissioner of Task Force, but he was prevented from talking to his sons. Though he made several visits to the Office of the Deputy Commissioner of Task Force, he was not permitted to talk to his sons who are allegedly detained and therefore approached this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and filed the Writ of Habeas Corpus seeking the above directions.

2. The writ petition was moved by way of a lunch motion on 13-8-1998 before the Division Bench of this Court. The Division Bench satisfied with the submissions made on behalf of the petitioner and an Advocate-Commissioner was appointed with a specific direction to visit the Police Station, Task Force, West Zone, Begumpet, Hyderabad and record the statements of the alleged detenus and report to the Court. Pursuant to which Sri D. Siva Nageswara Vara Prasad Babu, who was appointed as Advocate-Commissioner by this Court, accompanied by the advocate on behalf of the petitioner, stated to have visited the Police Station, Task Force, West Zone, Begumpet on the same day around 6 p.m. During the course of his visit the learned Advocate-Commissioner seems to have noticed one Shaik Nazir who was kept in Police lockup. On enquiry the said Nazir seems to have informed the learned Advocate-Commissioner that one person by name Ayub Bin Yahya who was detained in the lockup along with him, an hour earlier, to the visit of the Advocate-Commissioner was taken away by the Police to an unknown destination. The learned Advocate-Commissioner also made some enquiries. He could not find anybody nonetheless none of the detenus were seen by him with the Task Force Police nor in the Cell and prepared a report about what has been seen by him and submitted to the Court on 17-8-1998.

3. According to the learned Counsel for the Petitioner that all these three persons viz., 1) Yousif Bin Yahya, 2) Ayub Bin Yahya, and 3) Mohd.Ghouse, who are the sons of the petitioner were illegally taken into custody by the Task Force Police of Begumpet on 10-8-1998 and have been detained there for quite a long period till the Writ Petition is filed. According to the learned Counsel for the petitioner, as per the counter filed by the respondent though it was claimed that Ayub Bin Yahya was handed over by the Task Force Police to Mirchowk Police on 13-8-1998 he was produced only on 18-8-1998. He pleaded that the said Ayub Bin Yahya was ill-treated and was subjected to harsh treatment resulting in Ayub Bin Yahya being admitted in the Osmania General Hospital. With regard to Yousif Bin Yahya and Mohd Ghouse is concerned, the learned Counsel stated that Ghouse was left at Chandrayangutta area around 7 p.m on the same day i.e., 13-8-1998 and as far as Yousif Bin Yahya is concerned he was left near Charminar area on the very same day. The learned Counsel states that these persons were treated by the Doctors of Osmania General Hospital and they underwent treatment for number of days.

4. With this background the learned Counsel says that it is a case of torture and illegal custody by the Task Force Police of Begumpet and they are liable to be

punished according to law and pleads this Court to pass appropriate orders.

5. On behalf of the respondents, the learned Addl. Advocate-General filed two counters, one is filed on behalf of the Task Force Police, Begumpet and another on behalf of the Mirchowk Police. In the first counter filed on behalf of the Task Force Police, it was indicated that one Ayub Bin Yahya was taken into custody on 13-8-1998 and was produced before the XVI Metropolitan Magistrate on the same day. In the second counter filed on behalf of the Mirchowk Police it is clarified that though the Task Force Police took the alleged detenu Ayub Bin Yahya into custody and was, however, produced before the Mirchowk police with a complaint, basing on which a case in Cr.No.140 of 1998 was registered against Ayub Bin Yahya and was taken to the XVI Metropolitan Magistrate only on 14-8-1998. The learned Magistrate directed the Police of Mirchowk Police Station to produce the said Ayub Bin Yahya on 17-8-1998 and as such he was in the custody of the Mirchowk Police and when yousif Bin Yahya complained about ill-health he was taken to the Osmania General Hospital on 14-8-1998 and was admitted in the Hospital. Though the said Ayub Bin Yahya was to be produced on 17-8-1998 before the Court, on account of treatment being given to him in the Osmania General Hospital, he was produced before the Magistrate only on 18-8-1998, who remanded him to judicial custody on the same day and thereafter the said Ayub Bin Yahya has been enlarged on bail on 19-8-1998.

6. It is seen from the counters filed by the respondents that only Ayub Bin Yahya from out of the three persons was arrested and produced before the XVI Metropolitan Magistrate and has been now enlarged on bail. Though there are two versions from the counters filed by the respondents, the first counter is to the effect that Ayub Bin Yahya was arrested and taken into custody on 13-8-1998 and was produced before the Magistrate on the very same day i.e., on 13-8-1998, but in the other counter filed on behalf of the Mirchowk Police it was clarified that Task Force Police handed over Ayah Bin Yahya to Mirchowk Police on 13-8-1998 and a Crime was registered as per the complaint and the said Ayub Bin Yahya was produced before the XVI Metropolitan Magistrate, on 14-8-1998. Thereafter, of course, the treatment and other things have taken place and the said Ayub Bin Yahya has been now enlarged on bail by the orders of the XVI Metropolitan Magistrate, on 19-8-1998.

7. Insofar as the allegation that Yousif Bin Yahya and Mohd. Ghouse arc also detained, in the counters filed by the respondents, they have denied the arrest of these two persons. As far as Ayub Bin Yahya is concerned, the respondents have now clarified that he has been enlarged on bail. In the background of these allegations and counter allegations it would be difficult for this Court under Article 226 of the Constitution of India to make an enquiry as to whether the alleged detenus were arrested on 10-8-1998 by the Task Force Police as alleged by the petitioner and that the said Yousif Bin Yahya and Ghouse were subjected to torture and ill-treatment which made them to take treatment from the medical authorities, apart from Ayub Bin Yahya also being treated by the medical

authorities. We make it clear that since the case against Ayub Bin Yahya is pending before the XVI Metropolitan Magistrate, it would be open to the Magistrate while deciding the case in Cr.No.140 of 1998 also to make an enquiry about the allegations made by the petitioner and the statement given by the Ayub Bin Yahya who is accused in Cr.No. 140 of 1998 before the Court below and on such statements being recorded it is open to the XVI Metropolitan Magistrate to make further enquiry by giving an opportunity to both the sides and pass appropriate order according to law.

8. Insofar as the allegations that Yousif Bin Yahya and Mohd. Ghouse were mercilessly beaten as a result of which they were to take medical treatment, it would be open to both these persons to seek appropriate recourse before the appropriate forum against the persons, who according to them are responsible for the torture and on such recourse being taken, the said forum is entitled to enquire and grant redressal according to law to Yousif Bin Yahya and Mohd. Ghouse.

9. Since Ayub Bin Yahya has now been enlarged on bail keeping in view that we have permitted the parties to agitate their grievances before the appropriate forum, we close the writ petition, however, with the above observations.

10. We must also say that the counters filed by the respondents are not in tune with the expectations from them. After all they are to discharge their duties properly. When they are called upon to explain their actions they cannot try to justify their actions before the Court by filing two different counters without realising the implications. It shall be appropriate that the Deputy Commissioner of Task Force, Begumpet, to take appropriate action against these two officers who have filed the counters giving scope for suspicion about their statement.