

Court No. - 29

Case :- WRIT - C No. - 40097 of 2024

Petitioner :- Mahatab Singh

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Sandeep Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Donadi Ramesh,J.

1. Following orders were passed on 18.2.2025:-

"1. Reply to the personal affidavit of the Commissioner of Police, Agra filed today is taken on record. We have gone through the reply.

2. This is an unusual matter. The petitioner before this Court is a 70 years' old Advocate who is practicing at the District and Sessions Court, Agra for the last 43 years. The petitioner alleges that the Administrative Judge, Agra was to visit the District Judgeship for inspection on 15.11.2024. It is asserted that four police personnels came to the house of the petitioner and served upon him notice under Section 168 BNSS and told the petitioner that the District and Sessions Judge, Agra has orally directed them that till the Administrative Judge remains present in the Judgeship, the petitioner will be detained in the house. It is also submitted that thereafter the petitioner was detained in his house on 15.11.2024 from 6 A.M. to 4 P.M. Copy of the notice under Section 168 BNSS as well as photograph of the petitioner's house showing presence of police personnels in his verandah are annexed. The petitioner submits that the action of the state authorities in putting the petitioner in house arrest only because the District Judge apprehended that the petitioner may make a complaint against him to the Administrative Judge, is wholly arbitrary and 2 illegal.

3. Learned counsel for the petitioner submits that the visit of Administrative Judge otherwise is for the purpose of ensuring that the functioning in the District Judgeship is carried out in accordance with law. The Administrative Judge happens to be the guardian of District Judgeship who judges the performance, functioning and monitors the work of the Judgeship itself. The supervisory jurisdiction of the High Court over the affairs of district judgeship is also monitored by such visits of the Administrative Judge. It is argued that detainment of the petitioner at his house is solely with an intent to deprive the petitioner to meet the Administrative Judge, in collusion with the State authorities, which has not only violated the fundamental rights of the petitioner but also caused a dent to the institutional sanctity.

4. Taking note of such grievance, we called upon the Commissioner of Police to file his personal affidavit. The Commissioner of Police has filed his personal affidavit in which he has stated that a report was called from the concerned Deputy Commissioner of Police having jurisdiction over the area regarding petitioner's grievances. The Deputy Commissioner in turn called for a report from the Assistant

Commissioner of Police, Hari Parvat, Agra Commissionerate who has submitted a report on 14.2.2025. In this report, it is asserted that the Officiating Inspector of Police Station, New Agra was holding charge and he came to know about the visit of the Administrative Judge on 15th and 16th of November, 2024. The police official was instructed to ensure peace and tranquility as well as observance of protocol. It is, thereafter that the Incharge Neeraj Kumar shared the information about visit of the Administrative Judge. It was also disclosed that 3 leaflets were circulated by Sri Varun Kumar Gautam calling upon lawyers to meet him so that difficulty of lawyers could be highlighted before the Administrative Judge. The Incharge police station stated that Advocate Sri Varun Kumar Gautam and Sri Laxmi Lavania alongwith other Advocates were likely to indulge in a unconstitutional acts with support of the petitioner Mehtab Singh. These facts have been recorded in the General Diary on 13.11.2024 itself. Thereafter, notice was issued to the petitioner under Section 168 BNSS. The report of the Assistant Commissioner refers to certain orders received by him, pursuant to which the police acted for preservation of peace and tranquility. However, who has issued such orders, are not specified. The notice issued to the petitioner under Section 168 BNSS is also reproduced hereinafter:-

"नोटिस अन्तर्गत धारा 168 बीएनएस

नाम महताब सिंह

पता तेजनगर कमलानगर कमि० आगरा

अवगत करना है कि दिनांक 15/16-11-2024 को माननीय न्यायमूर्ति उच्च न्यायालय इलाहाबाद द्वारा आगरा जिला न्यायालय का निरीक्षण/भ्रमण किया जाना प्रस्तावित है निरीक्षण के दौरान आपके द्वारा माननीय न्यायालय आगरा में शान्ति व्यवस्था भंग किये जाने एवं संघेय अपराध किये जाने की संभावना की जानकारी प्राप्त हुई है। जिसका रोका जाना न्यायहित में आवश्यक है।

अतः आपसे अनुरोध है कि आप माननीय न्यायालय आगरा परिसर/बाहर शान्ति व्यवस्था कायम रखें।

यदि आपके द्वारा शान्ति व्यवस्था भंग करने या कराये जाने पर आपके विरुद्ध कठोर वैधानिक कार्यवाही अमल में लायी जायेगी।

प्रभारी निरीक्षक

थाना न्यू आगरा

कमि० आगरा"

5. The Commissioner in his personal affidavit has also annexed notice circulated by Sri Varun Kumar Gautam, Advocate which reads as under:-

"आवश्यक सूचना

दीवानी के सभी विद्वान व सम्मानित अधिवक्ताओं से विनम्र निवेदन है कि दिनांक- 16.11.2024 को हमारे विद्वान न्यायमूर्ति उच्च न्यायालय ----- आगरा जनपद न्यायालय का निरीक्षण करने आ रहे हैं। आप लोगों से निवेदन है कि आदर्णीय जिला जज न्यायिक अधिकारियों व न्याय प्रशासन से जिस किसी भी अधिवक्ता को शिकायत या परेशानी है वह अधिवक्ता अपनी परेशानी को साक्ष्य सहित अपने सेवक एडवोकेट वरुण गौतम को दिनांक- 13.11.2024 तक उपलब्ध करा दें और आप लोग अपने सेवक के साथ हाजिर रहे जिससे आपका सेवक उच्च न्यायालय के न्यायमूर्ति ----- के समक्ष आपकी समस्याओं को रख सके। तथा उनका समाधान हो सके।

ह० अप०

वरुण कुमार गौतम एडवोकेट"

6. The respondent-Commissioner of Police has also annexed the criminal record of the district, according to which following three cases are lodged against the petitioner, which pertains to year 1988.

"कार्यालय जिला अपराध अभिलेख ब्यूरो कमिश्नरेट आगरा

OFFICE OF D.C.R.B. THE COMMISSIONER OF POLICE AGRA

पत्रांक:- डीसीआरबी- अप० इतिहास/2024 दिनांक: जनवरी 29, 2025

सेवा में,

प्रभारी निरीक्षक न्यू आगरा

कमिश्नरेट आगरा।

कृपया आप अपने पत्र दिनांक:- 28.01.2025 का सन्दर्भ ग्रहण करने का कष्ट करें, जो निम्न अभियुक्त का अपराधिक इतिहास उपलब्ध कराये जाने विषयक है।

उक्त सन्दर्भित सी.सी.टी.एन.एस. अभिलेखानुसार एवं कमिश्नरेट आगरा के समस्त थानों को आर०टी० सन्देश दिनांक:- 28.01.2025 को करने के उपरान्त अभियुक्त के विरुद्ध निम्न अभियोगों का पंजीकृत होना पाया गया।

क्र०	नाम व पता	मु०अ०सं०- धारा थाना/जनपद
1	महताब सिंह पुत्र कल्यान सिंह नि०तेज नगर थाना कमलानगर कमि० आगरा	1. 697/1988 धारा 147, 436, 506 भादवि थाना न्यूआगरा, आगरा 2. 697 ए/1988 धारा 147, 323, 427, 307, 353, 336, 332 भादवि व 7 सीएलए एक्ट थाना न्यूआगरा कमि० आगरा 3. 697 सी/1988 धारा 147, 323. 336 भादवि थाना न्यूआगरा कमि० आगरा

ह०अप०
प्रभारी डीसीआरबी
कमिश्नरेट आगरा”

7. From a perusal of above chart as also its number, it is apparent that all the three FIRs are in respect of the same incident. Assigning A and C after case crime number 697 shows that all cases are in respect of solitary incident.

8. Learned counsel for the petitioner states that this FIR was against 40-50 Advocates. The copy of the General Diary etc. has also been annexed.

9. Respondents have also stated that the object of visit of police personnels to the house of the petitioner was to serve the notice issued under Section 168 BNSS, alone, and the petitioner was not put to house arrest.

10. Rejoinder affidavit has been filed today on behalf of the petitioner stating that entire report as well as GD entry etc. have been got prepared only to create justification for the illegal act of respondents, before this Court, inasmuch as the Commissioner of Police has called for a report only on 12.2.2025 and on 13.2.2025 the Deputy Commissioner called for a report from the Assistant Commissioner. The Assistant Commissioner has submitted its report on 14.2.2025 itself. Undue hot haste is shown in the proceedings to justify action of the State authorities in curtailing the liberty of the petitioner and to put him under house arrest for oblique reasons.

11. It is also submitted that the GD entry by the police only records movement of the police personnels from the police station to the house of the petitioner to serve notice on 15.11.2024 but there is no

GD entry placed on record with regard to return of the police from the house of the petitioner. It shows that these personnels remained present at the house of the petitioner so as to restrict the petitioner's movement. The GD entry further shows that even on 16.11.2024 police personnels came to the house of the petitioner at 7:38 A.M. It is stated that the Administrative Judge stayed for two days i.e. 15th and 16th of November, 2024 in the district and on 16.11.2024 also police personnels came to the house of the petitioner to stop his movement. In paragraph 9 of the writ petition it is stated that when the petitioner threatened the police personnels that he would commit suicide, the police personnels left the house of the petitioner.

12. It is stated that the petitioner is 70 years' old senior citizen and the manner in which his liberty has been curtailed under the orders of the District Judge in collusion with the police personnels, clearly depicts unbridled and unguided act by the district authorities which cannot be countenanced in a free democratic country.

13. We have heard learned counsel for the petitioner and Dr. D.K. Tripathi, learned Additional Chief Standing Counsel for the respondents.

14. From the perusal of the materials placed on record, we fail to understand as to what was the need and occasion for the police personnels to serve the notice under Section 168 BNSS upon the petitioner on account of visit of the Administrative Judge. The only material to justify the issuance of notice is the fact that one Sri Varun Kumar Gautam had circulated notice inviting information from the lawyers of district judgeship in respect of affairs of the Judgeship so that such facts could be placed before the Administrative Judge. The notice circulated by the counsel has also been extracted above.

15. We cannot take any exception to this notice which was only issued to the lawyers. If there is any difficulty faced by the Advocates in functioning of the Court, the concerned Advocate can always place all such facts before the Administrative Judge.

16. The only other material relied upon by the respondents to justify the issuance of notice is three criminal cases which are in respect of solitary incident of the year 1988. The incident pertained to the year 1988 in the Court premises and more than 40-50 lawyers were implicated. Even if, the petitioner was implicated in this case, this itself would not be sufficient to issue notice under Section 168 BNSS after almost 37 years of the incident. The affidavit of the Commissioner of police is otherwise absolutely silent as to from whom he received instructions to issue notice to the petitioner or to curtail his liberties. The materials on record do not prima facie justify issuance of notice under Section 168 BNSS, 2023 inasmuch as commission of any cognizable offence cannot be apprehended on the basis of it. Though the respondents contend that the petitioner was not put to house arrest but the manner in which the petitioner has been issued notice under Section 168 BNSS and the proceedings have been undertaken, we find prima facie substance in the petitioner's grievance which requires deeper investigation in the matter.

17. In the hierarchy of Courts, the District Judgeship being 8 most accessible are virtually the foundational Courts. Its effectiveness in

securing rule of law cannot be over emphasized. The visit of Administrative Judge to the District Judgeship concerned has thus important objective to achieve. It ensures smooth functioning of the judgeship. Views of the lawyers in such circumstances become important. Very often, the Administrative Judge visiting the District Judgeship interact with lawyers so as to ascertain the smooth functioning of the District Judgeship. If there is any unauthorized interference by the State, under unknown instructions, for withholding information from the Administrative Judge during his visit to the District, it may cause serious impairment to the administration of justice in the Judgeship.

18. Before proceeding further, we call upon the Registrar(Compliance) of this High Court to obtain a report from the District Judge, Agra in the entire matter and also to clarify as to who had issued instructions to the police to serve notice upon the petitioner or to interfere with his liberties. Such comments of the concerned District Judge, Agra would be submitted in a sealed cover to be placed before the Court on the next date.

19. List on 28.2.2025 as fresh at 2:00 P.M."

2. District Judge, Agra has submitted his report in a sealed cover according to which he was neither consulted nor made aware of any action taken by the police personnel for effecting notice upon the petitioner under Section 168 B.N.S.S. As per his report this was done at the level of the local police which received reliable information according to which some obstruction could be created during the visit of the Administrative Judge by few persons including the petitioner. The report of the District Judge states that petitioner was not put to house arrest but the police personnel have admitted that the petitioner was kept under supervision. It is also stated that even the District Judge was not aware of such action of police nor any permission of the District Judge was taken. The comments of the District Judge also reveals that the Hon'ble Administrative Judge has also called for an explanation in the matter.

3. Though District Judge, Agra has clearly dissociated himself from any action taken against the petitioner in the present matter and according to him the action was taken by the police personnel at their own level yet, in the opinion of the

court, the reply of the District Judge raises issues of concern. In the previous affidavit of Commissioner of Police it is stated that the local intelligence unit had reported to the concerned authorities that some advocates may create hindrance during the visit of the Administrative Judge. The report of local intelligence unit specifically named the petitioner. It was only to ascertain peaceful visit of the Administrative Judge that notice under Section 168 B.N.S.S. has been issued. The previous instruction of the Commissioner of Police also state that in Case Crime No.697A of 1988 arrest warrants have been issued by the Civil Judge (Junior Division) on 24.12.2024 which is nearly after 37 years and that is why to create pressure the petitioner has raised such objection. The affidavit of the Commissioner as also the report of District Judge, Agra does not specify as to who took the decision to issue notice to petitioner under Section 168 B.N.S.S. The Commissioner of Police has stated that police personnel remained at the house of the petitioner only for 2-3 minutes to serve notice under Section 168 B.N.S.S. and that both copies of notice were retained by the petitioner. However, in the report of the District Judge it is clearly acknowledged that petitioner was kept under supervision.

4. Visits of Administrative Judge to the concerned district is a routine affair for the reasons which we have already indicated in our previous order. We have not heard of an incident in which an advocate is kept under supervision or notices are issued on the apprehension that a cognizable offence could be committed only because 37 year back the petitioner was implicated in a criminal case.

5. The stand of the District Judge that no approval was taken from the District Magistrate/District Judge nor they were

informed is also an aspect which causes concern. The reason for it is simple. The petitioner in his writ petition has specifically asserted that he was put to house arrest and was not allowed to come out of his house for the entire day on 15.11.2024. Even on 16.12.2024 his movements were curtailed and only on his extending threat that he would commit suicide that he was allowed to come out of his house. Alongwith the writ petition the petitioner has also annexed list of cases in which he was required to appear as an advocate on 15.11.2024 itself. These 15 cases were listed before the Sessions Division itself. A specific statement is made that in none of those cases the petitioner could actually appear.

6. It would be a sad day if a lawyer practising in District Court is not allowed to attend the Court on account of restrictions put by the police authorities over the movements only because the Administrative Judge is to visit the Court. We are of the considered view that the issue needs to be probed further.

7. In the facts of the case we call upon the Commissioner of Police, Agra to file his personal affidavit clearly explaining the rationale and justification for service of notice upon the petitioner under Section 168 B.N.S.S. as also maintaining supervision over the petitioner as is admitted by the police personnel before the District Judge. The Commissioner of Police will also clarify the policy to monitor and supervise movements of an advocate during visit of Administrative Judge and furnish details of such care and caution resorted to by the District Administration, during previous visits of the Administrative Judge, to the district. The only criminal case against the petitioner is of 1988. The Administrative Judge of the district must have visited numerous times during last several decades.

We direct the Commissioner of Police to explain and produce records regarding similar action taken against the petitioner during the last ten years. The concerned police official on whose report the action was taken against the petitioner shall also remain present before the Court alongwith records. The Deputy Commissioner of Police of the concerned zone, who was the highest authority allegedly kept informed of the matter, shall also remain present. This direction is required to ascertain as to whether such action of police is a part of routine exercise or is it a singular case of its own. We also want to know that who exactly ordered action against the petitioner.

8. List once again as fresh on 18.3.2025.

9. The report of the District Judge, Agra will be put in a sealed cover and shall be kept with Registrar General of this Court to be produced on the next date of hearing.

Order Date :- 4.3.2025

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