

Notice issued to External Affair Ministry regarding two Punjab residents in Pakistan Jail.

In a Public Interest Litigation filed filed by Lawyers For Human Rights International alleging that two Punjab residents (Indians) are languishing in a Pakistani jail even after completing their sentences, the Punjab and Haryana high Court issued a notice to the Ministry of External Affairs, Government of India and Punjab Government. The respondents have been directed to provide replies within a month.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No._____/2013

(Public Interest Litigation)

Lawyers for Human Rights International (Regd.)

Office at House No.516, Sector 11-B, Chandigarh,

through its Member Gagan Aggarwal Advocate.

. . . Petitioner

Versus

1. Union of India through Secretary,

Ministry of External Affairs, South Block, New Delhi.

2. State of Punjab through its Home Secretary,

Civil Secretariat, Chandigarh.

. . . Respondents

Petition under Articles 226/227 of Constitution of India for issuance of a writ of Mandamus or any other writ order or direction to the respondents to speed up the process of the identification of the Indian citizens Dilbagh Singh son of Balkar Singh and Sunil son of Fazal Masih who are detained in Kot Lakhpat Jail Lahore (Pakistan), so they can be handed over to the Indian authorities by the Pakistani authorities, since they have long time back completed their sentences.

...

Respectfully showeth:-

1.

That the petitioner organization is comprised of Lawyers who are practicing in this Hon'ble Court as well as the Districts Courts of Punjab, Haryana and Chandigarh. Though the organization has membership throughout the world, however the units of Punjab, Haryana and Chandigarh are actively involved in upholding of Human Rights and rule of law through Public Interest Litigations and by providing free legal aid to the persons who are unable to afford litigation. The organization also trains and disseminates Human Rights knowledge through seminars and workshops. The organization does not accept any grants nationally or inter-nationally and the members of the organization make expenditure from their own earnings. The petitioner organization is also part of the International Campaign against Death Penalty and ratification of the treaty for formation of International Criminal Court at Hague. So the petitioner organization is competent to invoke the extra ordinary jurisdiction of this Hon'ble Court by way of the **Public Interest Litigation** under Articles 226/227 of Constitution of India in the present matter of public importance.

2.

That the petitioner organisation through public interest litigation filed in this Hon'ble court has been able to secure orders for grant of relief in cases prominent of which are; 17 Indians facing death penalty in U.A.E, Prisoner's who are tortured in jails, Sale of Narcotics in Jails, Sex racket of Patiala, Disposal of dead bodies in canals in Punjab, Honour killing cases of Haryana, missing children case and custodial violence.

3.

That the General Secretary of the petitioner organization received a phone call from Advocate Zulfiqar Ali Jehangir who is a Human Rights Lawyer practicing at Lahore, Pakistan, who reported that he had gone to visit Kot Lakhpat Jail Lahore, where he met

some Indians who had served their sentences, but are being detained in the jail since the Indian Authorities, i.e. Ministry of External Affairs is initiating steps for sending the Indian prisoners back to India.

4.

That an e-mail was received by the petitioner organization on 29.3.2013, wherein the details of the prisoners was provided by the Pakistani Human Rights Lawyer, which disclosed that two prisoners namely **Dilbagh Singh** son of **Balkar Singh, Post Office Sohal, Tehsil** and **District Tarn Taran** and **Sunil** son of **Fazal Masih, village Dadwah, Post Office Dhariwal, District Gurdaspur**, have completed their sentences and since last few months are awaiting their being handed over to Indian authorities. The General Secretary of the petitioner organization also talked to the wives of both the prisoners on the mobile Numbers which were provided in the e-mail and the wives of both the prisoners disclosed that their husbands were missing since last 8 months and they also had got the news that the husbands of theirs were being detained in some jail in Lahore. Kiran who is wife of Dilbagh Singh disclosed that her husband is a truck driver and used to work as a driver on the trucks which transported various goods between the two countries and on one of such trips to Lahore, he was detained by the Pakistani authorities.

5.

That Seema who is wife of Sunil also disclosed that Sunil had strayed into the Pakistani territory and thereafter since last more than 8 months she has no news of her husband.

6.

That it is a routine that citizens of both the countries stray into each other territory and since found without documents have to suffer incarcerations which are much more then the sentence given to them for their offences.

7.

That it has also been experienced that the process of identifying the citizens of each country and then exchanging them through Ministry of External Affairs takes a long time, due to which the families of the people incarcerated have to suffer for long period. It is also been experienced that the process of the exchanging of the citizens is also hampered due to the cold war like situations between both the countries or due to tension between the countries due to some odd incidents.

8.

That since the Constitution enshrines right to life and liberty as enshrined under Article 21 of Constitution of India and also a right to speedy trial, so it is in the interest of justice and the prisoners, including their family members that the people who are languishing in the different jails of Pakistan and India are brought back to their native countries in speedy and efficacious manner.

9.

That the matter of detention of the two Indians has been brought to the notice of petitioner organization by a Human Rights Lawyer through e-mail dated 19.3.2013. Copy of the said e-mail is being appended herewith as **Annexure P-1** and the facts of the case have been verified by the petitioner organization by making phone calls to the families of the Indians who are detained in Lahore jail and since lots of Indians are detained in Pakistan Jails and so are Pakistani citizens in Indian jails, the petitioner organization is filing the present public interest litigation, so that the Lawyers community can play a role in ensuring that the fundamental rights of the people detained in jails in either of the countries is protected and the prisoners are united with their families at earliest from both the sides i.e. India and Pakistan. So the present public interest litigation.

10.

That the main law points are involved in this writ petition are as under:-

1.

As to whether the facts and circumstances warrant of issuance of directions to the respondents to speed up their process for speedy handing over of the detainees to India.

2.

As to whether the fundamental rights of the detainees need to be protected as per Article 21 of Constitution of India even though they are detained in Pakistan Jail.

11. That there is no other remedy either by appeal or revision is available with the petitioner except to approach this Hon'ble Court by way of filing

the present writ petition.

12. That no such or similar petition has earlier been filed by the petitioner in this Hon'ble Court or in the Hon'ble Supreme Court of India.

13. That the documents attached with the writ petition are true copies of the originals as required under Rule 22 of the Writ Jurisdiction Rules.

In the light of the above given circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ order or directions:-

1. direction to the respondents to speed up the process of the identification of the Indian citizens Dilbagh Singh son of Balkar Singh and Sunil son of Fazal Masih who are detained in Kot Lakhpat Jail Lahore (Pakistan), so they can be handed over to the Indian authorities by the Pakistani authorities, since they have long time back completed their sentences.
2. with a further prayer that this Hon'ble Court may kindly pass any other appropriate writ, order or direction which deem fit and proper in the facts and circumstances of the case;
3. advance notice of the writ petition to the respondents may kindly be dispensed with;
4. filing of certified copy of Annexure P-1 may be exempted in the interest of justice.
5. the writ petition be allowed as prayed for.

(P E T I T I O N E R)

T H R O U G H

(NAVKIRAN SINGH)

P/786/1986

CHANDIGARH: **(RUBINA N.SINGH)(HARJEET SINGH)**

P/71/1988 P/3558/2010

A D V O C A T E S

DATED:30.03.2013

COUNSEL FOR THE PETITIONER