

A NAVKIRAN SINGH AND ORS.  
v.  
STATE OF PUNJAB AND ANR.

JULY 2, 1995

B [KULDIP SINGH AND N. VENKATACHALA, JJ.]

*Constitution of India, 1950 : Article 32.*

C *Public Interest Litigation—Kidnapping and murder of advocates—Reply filed by State unsatisfactory—Police filing "untraced" reports accepted by Magistrate by cryptic Order—Senior Officer of CBI to investigate the kidnapping of Advocates—Direction issued to render all help and assistance to CBI—State to provide security to all those advocates who genuinely apprehend danger to their lives from militants/anti social elements in the State—Recommendation by the District Judge or Registrar High Court may*  
D *be treated as genuine and the State Government may consider the same sympathetically.*

E A letter-petition filed by the Petitioners, who were practising Advocates, was treated as a petition under Article 32 of the Constitution of India. The petition highlighted the failing of the rule of law at the hands of State Administration and its law enforcing agencies, more prominently the place and paramilitary forces, especially with regard to the kidnapping of Advocates in the State and their subsequent elimination.

F It was prayed in the petition that the persons responsible for killing of the advocates be suitably punished, appropriate compensation should be paid to the kith and kin of kidnapped advocates by the State and protection and security cover be given to those advocates who happen to conduct cases of TADA, police excesses and human-rights violations.

G On behalf of the respondents it was contended that in spite of the best efforts made to trace the kidnapped advocates no clue was found; and that "untraced" report was filed which was accepted by the concerned Magistrate.

Disposing the petition, this Court

H HELD : 1.1. This Court is neither satisfied with the reply filed by the

State nor with the concerned Magistrates who accepted the "untraced" reports. It is necessary to have further investigation by an independent agency which is not under the influence of the State police and other authorities responsible for the law and order in the State. No citizen of this Court much less the advocates who are protectors of human rights can be permitted to be kidnapped and eliminated in the manner it is alleged. In any case this court is unable to accept the version of the State that its machinery including the police is not in a position to trace culprits responsible for the kidnapping of the advocates. [731-D-E]

1.2. The CBI is directed to appoint a senior officer to hold investigation/inquiry into the kidnapping of the advocates. The Chief Secretary, Home Secretary, Director General of Police of the State are directed to render all help and assistance to the CBI in conducting the investigation. [731-F-G]

2. The State must provide security to all those advocates who genuinely apprehend danger to their lives from militants/antisocial elements in the State. If the request for security is recommended by the district judge of the District or the Registrar of the High Court it may be treated as genuine and the State Government may consider the same sympathetically.

[731-H, 732-A]

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) No. 242-258 of 1994.

(Under Article 32 of the Constitution of India.)

R.S. Sodhi for the Petitioners.

K.T.S. Tulsi Additional Solicitor General, and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

**KULDIP SINGH, J.** A letter-petition dated May 29, by Navkiran Singh and 16 other advocates practising in the Punjab and Haryana High Court at Chandigarh and various other places in Punjab voicing their concern over the kidnapping/elimination of advocates in the State of Punjab was addressed to the Chief Justice of India. Copies thereof were sent to all the Judges of the Supreme Court. A note was received from the residential office of one of us (Kuldip Singh, J.) desiring that the letter be

A treated as a writ petition under Article 32 of the Constitution of India, if permitted under the Rules, and be placed before an appropriate Bench. The petition was examined by the PIL-Cell of the Supreme Court and it was decided to treat the letter-petition as a petition under Article 32 of the Constitution of India.

B Paras 3 & 4 of the writ petition are reproduced hereunder :

C "3. The Punjab situation is not unknown to anybody. Rather, it has gone to International sphere : The most talked about matter is the failing of the rule of law in the hands of State Administration and its law enforcing agencies, more prominently the police and paramilitary forces. For the present, we are not concerned with any other aspect of the matter, but our serious concern is with regard to the kidnapping of Advocates in Punjab by the Punjab Police and thereafter elimination thereof, but taking the stand that their whereabouts are not known to the police. Ranbir Singh Mansahia, an Advocate from Bathinda was kidnapped by the Punjab Police some three years ago and upto now his whereabouts are not made known. Thereafter, Jagwinder Singh, an Advocate from Kapurthala was taken away by the Punjab Police and possibly was done to death. Thereafter, towards the start of 1993 Kulwant Singh, Advocate of Ropar, his wife, and their son, only 1-1/2 years old, was kidnapped by the Ropar Police (Punjab) and after a long persuasion of the matter, the State took the stand that they have been killed at the hands of a terrorist. The State was not even prepared to investigate into the case and ultimately, the matter went over to the Supreme Court from where there was a direction to probe into the case by the CBI, which is yet not complete. It is a fact that Advocates of Punjab, Haryana and Chandigarh remained on strike for about two months in relation to the matter of Kulwant Singh. With regard to other Advocates also, at some places, the Advocates went on strikes.

G 4. Now on 2.5.94, Sukhwinder Singh Bhatti, Advocate of Sangrur was returning to his village after court work. Earlier, he used to come to the courts on a scooter. Sensing trouble from the police there, he started travelling in the bus with a view that he will be more safe in the company of public in the bus. It is also stated that

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he was made to get down from the bus on the date referred to above by some armed persons in plain clothes, who were having a vehicle without number. There were three eye witnesses of the same village to which Shri Bhatti belongs. The police posts on both sides of the road were there from where he was made to alight from the bus. Every vehicle is to be checked especially when it is without number and is occupied by persons having weapons. Therefore, there cannot be any other kidnapper excepting the Punjab police people. Uptil now, his whereabouts are not available, although, the police registered a case of kidnapping. It is a strange situation that when the police is itself kidnapping, a false case is being registered and its outcome can will be imagined. Various Bar Associations are taking up the matter in different ways by approaching the State Administration or seeking legal remedy. It will not be difficult to predict that the kidnapped Advocate will suffer the fate of the type of Mansahia, Jagwinder Singh and Kulwant Singh."

It was, *inter alia* prayed in the petition that the persons responsible for kidnapping and killing of the advocates be suitably punished, appropriate compensation should be paid to the kith and kin of the kidnaped advocates by the State and protection and security cover be given to those advocates who happen to conduct cases of TADA, police excesses and human-rights violations.

This Court on November 7, 1994 issued notice to the State of Punjab through Chief Secretary and the Home Secretary. Notice was also issued to the District Magistrates and the Superintendents of Police of Bathinda, Ropar and Sangrur. The State of Punjab has filed reply to the writ petition by way of affidavit of Karnail Chand Banga, Deputy Secretary, Punjab, Department of Human Affairs and justices, Chandigarh.

So far as the kidnapping the murder of Kulwant Singh, advocate of Ropar, his wife and his small child is concerned, this Court has already entrusted the investigation to the CBI which is being conducted by the said agency. Similarly, V.K. Bali, J. of the Punjab & Haryana High Court has directed the CBI to hold investigation regarding the kidnapping on May 12, 1994 of Shri Sukhwinder Singh Bhatti, advocate practising in District Courts at Sangrur. The investigation so entrusted to the CBI by the High Court is still pending. So far as these two cases are concerned nothing more

A need be done. The result of the investigation by the CBI is awaited.

Shri Jagwinder Singh alias Happy, advocate Kapurthala was allegedly kidnapped by the Police on September 25, 1992. Nasib Kaur, wife of Sukhdev Singh and mother of Jagwinder Singh, advocate lodged the first information report on October 1, 1992 in the following words:

B "On 25.9.92 at about 6.30 A.M. myself, my husband, daughter and two sons and daughter were present in the house. I was standing near the door, a gypsy blue in colour came from the city side in which some persons in uniform were sitting and stopped in front of door of our house. One person with two stars on his shoulders, height about 5'-8" alighted from the gypsy and asked about my son Jagwinder Singh @ Happy who is practising lawyer at Jalandhar, I replied that he is present in the house and entered the house to call him. The person wearing two stars alongwith two other man in uniform immediately followed me. I introduced them with my son Jagwinder Singh. They said that he is called by officers of staff. My son Jagwinder Singh asked that he would come himself to the staff about they did not agree. Myself and Jagwinder Singh came out of the house with them from where they took Jagwinder Singh towards city in the gypsy. My husband also requested them that he will produce Jagwinder Singh in staff but in vain. We kept on searching out son Jagwinder Singh at out own but could not find any clue. My son Jagwinder Singh has been kidnapped by 5 sikh uniformed persons and is kept some where. Today I was coming to lodge the report alongwith my husband but you have met. Action be taken. The Statement has been heard which is correct. I can identify the persons on seeing them. My son has been taken away with the intention to kill".

G We have carefully perused the reply filed on behalf of the State of Punjab. It has been repeatedly stated in the reply that efforts were made to trace Jagwinder Singh, advocate but he could not be found. Finally Shri R.L. Bhagat, Superintendent Police Headquarters came to the conclusion on February 10, 1993 that no clue was found in spite of the best efforts made to trace Shri Jagwinder Singh, advocate and as such untraced report was filed which was accepted by the Magistrate concerned on September 8, 1993.

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So far as the kidnapping of the Shri Ranbir Singh Mansahia, advocate from Bathinda is concerned, it is stated that a case FIR No. 169 dated September 12, 1991 was registered at police station Kotwali Bathinda regarding the kidnapping of the said advocate. It is repeatedly stated in the reply filed by the State of Punjab that investigation was made by various officers from time to time to trace Shri Mansahia but with no success. It is finally stated that on November, 11, 1992 Inspector Harmel Singh, CID, Patiala wrote summary report and recommended that untraced report be prepared in this case as no clue of Ranbir Singh Mansahia, advocate came to light during investigation. Untraced report was filed on December 26, 1992 which was accepted by the Chief Judicial Magistrate, Bathinda on December 24, 1994.

We are not satisfied with the reply filed by the State of Punjab. We are also not satisfied with the cryptic orders of the concerned Magistrates who accepted the untraced reports. We are of the view that it is necessary to have further investigation by an independent agency which is not under the influence of the Punjab police and other authorities responsible for the law and order in the State of Punjab. No citizens of this country much less the advocates who are protectors of human rights can be permitted to be kidnapped and eliminated in the manner it is alleged. In any case we are unable to accept the version of the State of Punjab that the State machinery including the Punjab police is not in a position to trace the culprits responsible for the kidnapping of the advocates.

We, therefore, direct the CBI to investigate the kidnapping of Jagwinder Singh and Ranbir Singh Mansahia, advocates and send a report to this Court within four months of the receipt of this order. Copy of this order along with copy of paper-book be sent to Director, CBI to appoint a senior officer to hold investigation/inquiry into the kidnapping of the two above mentioned advocates and submit a report to this Court within the specified time. We direct the Chief Secretary, Home Secretary, Director General of Police, Punjab, the Senior Superintendents of Police in the district concerned and the Punjab police in general to render all held and assistance to the CBI in conducting the investigations as directed by us.

We are of the view that the State of Punjab must provide security to all those advocates who genuinely apprehend danger to their lives from

**A** militants/anti social elements in the State of Punjab. If the request for security is recommended by the district Judge of the district or the Registrar of the High Court it may be treated as genuine and the State Government may consider the same sympathetically.

**B** The writ petition is disposed of in the above terms. The Registry to place the report of the CBI before the Court as and when received.

V.S.S.

Petition disposed of.